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## CONGRESSIONAL RECORD — SENATE

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Mr. STEVENS. Mr. President, if I might interrupt the Senator from Illinois, the time now is reserved for the Senator from Virginia, (Mr. HARRY F. BYRD, JR.) for 1 hour preceding the vote on his amendment to S. 245.

Mr. STEVENSON. Mr. President, I ask unanimous consent, then, that excerpts from Interpretative Rulings 33, 56, and 70 of the Ethics Committee be printed in the RECORD so there will be no doubt about the intentions of the Senate and the consequences of its action today if we approve this resolution. Conflicts of interest, any appearance of conflicting interests will remain prohibited.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## INTERPRETATIVE RULING No. 33

The propriety of outside employment is governed by Rule 45. No employee, regardless of salary level, may receive compensation by virtue of influence improperly exerted. Nor may any employee engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

## INTERPRETATIVE RULING No. 56

It prohibits Members and employees from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with performance of official duties.

## INTERPRETATIVE RULING No. 70

Paragraph 6 of Rule 45 on conflicts of interest was intended to severely restrict the practice of any profession (for compensation) by Senate employees. That paragraph states in pertinent part that no Member or (full-time) employee compensated at a rate in excess of \$25,000 per annum shall: a) affiliate with a firm or partnership, b) permit his or her name to be used by such, or c) "practice a profession for compensation to any extent during regular office hours of the Senate office in which employed."

Mr. STEVENSON. With the assurances of the Senators and that understanding, I have no objection to the resolution which they have offered.

Mr. HARRY F. BYRD, JR. Mr. President, I shall yield 5 minutes of my time to the Senator from Alaska.

Mr. HARRY F. BYRD, JR. was recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I shall be glad to yield 5 minutes of my time to the Senator from Alaska.

Mr. MOYNIHAN. Mr. President, we thank the distinguished Senator from Virginia and express our deep appreciation to the Senator from Illinois, chairman of the Senate Ethics Committee, for his forthright and forceful statement.

Mr. STEVENS. I join the Senator from New York in thanking the Senator from Illinois for his statement. I point out for the RECORD that the rules that are in effect concerning conflicts, disclosure, and in particular, the association of a Senator or employee with firms or publicly held corporations, remain in effect notwithstanding the postponement of the date in rule XLIV which will be brought about in this resolution.

I thank the Senator from Virginia, also, for yielding time.

## TAIWAN ENABLING ACT

The PRESIDING OFFICER. Under the previous order, the hour of 11 o'clock having arrived, there will be 1 hour of debate on the amendment of the Senator from Virginia (Mr. HARRY F. BYRD, JR.) to be equally divided between the Senator from Ohio and the Senator from Virginia.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

## ORDER OF PROCEDURE

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. I should like to inquire, what disposition was made of the matter we have been discussing for the last hour?

Mr. MOYNIHAN. The Senator from New York informs his friend from Arizona that the matter will be taken up following the disposition of the bill before the Senate at this moment, which I believe is to be at noon today. We shall resolve this other matter by 12:30 p.m.

The PRESIDING OFFICER. That is correct. The vote on disposition of the Byrd amendment to the bill will occur at 12 noon. Then the Senate will vote at 12:30 on Senate Resolution 93.

Mr. MOYNIHAN. The Senate will vote by 12:30, I believe.

The PRESIDING OFFICER. Not later than 12:30, the Senator is correct.

## TAIWAN ENABLING ACT

The Senate resumed consideration of the bill, amendment No. 93.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business of the Senate is amendment No. 93 to S. 245.

Mr. HARRY F. BYRD, JR. Is not the pending matter the amendment offered by the Senator from Virginia?

The PRESIDING OFFICER. Yes, it is, the Senator is correct.

Mr. HARRY F. BYRD, JR. Mr. President, the pending amendment states this:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

Mr. President, in the heat of debate last evening, some of the opponents

attributed to this amendment provisions which are not incorporated in any way in the amendment. Let me state what the amendment does not do.

First. The amendment does not express either approval or disapproval of the President's decision to give notice under article X of the Mutual Defense Treaty between the United States and the Republic of China.

Second. The amendment does not take from the President any power he now has.

Third. It does not prevent the President from expressing the intent to abrogate a treaty.

Fourth. It does not affect in any way the notice the President has given under article X, which states:

Either party may terminate the treaty one year after notice has been given to the other party.

Fifth. It does express the view of the Senate that, under the Constitution, the President cannot unilaterally nullify a treaty.

I state again the precise amendment on which the Senate will be voting at the hour of 12 noon. The amendment reads as follows:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and any other nation.

This, Mr. President, in the view of the Senator from Virginia is an extremely important matter. It goes far beyond the question of Taiwan. The United States has many very important mutual defense treaties with many different nations. The Senate of the United States, by its action today in voting down the Byrd amendment, if, indeed, the Senate takes that action, would be establishing a precedent by saying to the Nation and to subsequent Presidents that a President, acting alone, can terminate a treaty that has become law as a result of approval by a two-thirds vote of the Senate of the United States.

Mr. President, in the discussion yesterday, the able senior Senator from Louisiana (Mr. LONG) called attention to article VI of the Constitution. Article VI reads thusly:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Senator LONG then very aptly stated this:

The impression I gather from that article is that a treaty signed by the President and ratified by a two-thirds majority of the Senate is the law, and if you have a later law to the contrary, it would supersede that law. In case of conflicting laws, whichever law is the latest of the two would prevail. That is the impression that I have.

Then he continues:

If you want to repeal a law, you have to do it with another law. The Executive can make agreements, but he is sworn to uphold

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the law himself, so that he cannot repeal a law just by saying "I just don't like the law; I am not going to abide by it."

The Senator from Louisiana continues:

If one of us tried to do that, we would be put in jail. They would say, "You don't have the right to decide what law you are going to abide by or what law you are not going to abide by."

The Senator from Louisiana continues in that same vein, pointing out that a treaty, being a law, cannot be set aside unilaterally by one branch of the Government, or cannot be set aside unilaterally by the President of the United States, whoever he may be.

Mr. President, I realize that there are many who feel that the President should have that prerogative, but under the Constitution I think it is very clear that he does not have it.

The purpose of this amendment is not to focus on Taiwan, but the purposes of this amendment is to focus on the broader problem of what happens to future treaties made by the United States, ratified by the Senate, with other nations of the world.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Arizona.

Mr. GOLDWATER. I think it would be helpful if the members of the Foreign Relations Committee, including the chairman, would indicate to those of us who support the Senator's amendment whether they would approve of the President abrogating or terminating the treaty in which it created the United Nations or created NATO.

I think this is rather important that the chairman, or ranking member, or any member, say that they want that condition to prevail in this country.

If the Senator would further yield, because he just referred to the words of Thomas Jefferson which are in our manual, and we are supposed to live by that manual.

I would like to read what the Supreme Court Justice Joseph Story, a very scholarly jurist, wrote in his commentaries on the Constitution of the United States in connection with treaties:

This joint possession of the power—

Speaking of the President—

affords a greater security for its just exercise, than the separate possession of it by either.

It continues:

[I]t is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively, upon the subject of treaties . . . there is no American statesman, but must feel, that such a prerogative in an American president would be inexpedient and dangerous.

Now, I think that might be right at the heart of what the Senator from Virginia is talking about and which we do not seem to be able to convince the members of the Foreign Relations Committee is valid.

I might further comment that while the Constitution is not too precise in this field, the words of the Founding Fathers are bound with precision in re-

lation to the power of the Senate in treaties and the power of the President in treaties.

Story adds, in words having equal bearing upon repealing or making treaties:

The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent of other independent minds to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation.

To me, that is all we are trying to do. We want to solve this question, can a President of the United States wake up in the middle of the night, without talking to anybody, and say, "Well, that treaty, I don't like that treaty, let's end NATO, let's end our association with Japan, let's end any of the treaties we have," and we have to stand by and put up with it.

We have no power under the argument advanced yesterday by members of the Foreign Relations Committee, no power to act.

I think it is very necessary that the Senator's amendment is put into this measure, which I consider to be a good piece of legislation, much better than we originally had.

I think we need the teeth to keep consistency with the desires of most members of the Foreign Relations Committee that I know to bring back to the Congress those powers which left this Congress during the last 40 years.

Here we are playing around with something that has never been done in the 201-year history of our country until this President took it on himself to do it.

I just wanted to make those few comments. I thank the Senator from Virginia.

Mr. HARRY F. BYRD, JR. The able Senator from Arizona is so right. I thank him for his statement.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. RIEGLE). Who yields time?

Mr. CHURCH. Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished chairman.

Mr. President, the Constitution reads on this particular question, and I am reading from paragraph 2 of section 2, article II of the Constitution: "He"—the President—"shall have Power, by and with the Advice and Consent of the Senate, to make Treaties"—to make treaties. It does not say anything about shall have the power to terminate them.

It would seem to me that the authors of the Constitution intended for this to be a share in power, meaning by my saying "this," I mean the terms of the treaty.

If the authors of the Constitution had intended that the power to terminate be shared, they would have said so. The Constitution only talks about making treaties, and in that instance includes the Senate.

"He"—the President—"shall have Power, by and with the Advice and Consent of the Senate, to make Treaties."

It seems to me that the distinguished Senator from Virginia has raised a very nice, interesting, important and far-reaching question, and the constitutional implications are broad. They are broad. It is a question that I think should be carefully considered.

The Foreign Relations Committee has indicated that it would hold hearings on this matter. I suppose that the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) would certainly avail himself of that opportunity on such occasion.

The constitutional questions are so broad, Mr. President, that I would hope that the distinguished Senator from Virginia, having raised the issue, having expressed a strong viewpoint on it, having made a case, from his standpoint, that is worthy of consideration and attention for hearing and study, would consider withdrawing the amendment and not pressing the Senate to a vote on it at this particular time.

The distinguished Senator from Virginia has indicated that the adoption of his amendment by the Senate to the pending matter would not affect the Mutual Defense Treaty with Taiwan, would have no impact on that whatsoever. That being the case, the distinguished Senator from Virginia would lose nothing in withdrawing the amendment, inasmuch as, in his viewpoint, it would have no impact on what the President has done to terminate in accordance with the provisions of article X of the Mutual Defense Treaty—that treaty.

This is not the proper vehicle for this amendment. Mr. GOLDWATER, our distinguished colleague from Arizona, and others—I have not looked over the names, but I do know of Mr. GOLDWATER and others—are pressing this issue in the courts; and I think it would be well to let the courts make a decision on it. In the meantime, the Foreign Relations Committee could conduct hearings. Mr. HARRY F. BYRD, JR. could send a resolution to that committee, and hearings could be conducted, evidence could be presented, and the Senate then would be in a better position, with that kind of preparation, to vote on this very broad, far-reaching constitutional question.

If the Senate had intended in a mutual defense treaty that the Senate vote on its termination, the Senate would have written that in as a reservation. The Senate approved the ratification of that treaty with its eyes open, with its ears open, and knowing full well of the provisions in article X of the treaty allowing for termination of the treaty by either party.

Some will say, "Well, who is the party?" If the "party," by the constitutional forebears, had been intended to be the Senate, it seems to me they would have said so, just as they said that the party in making treaties is the President, by and with the advice and consent of the Senate. They certainly must have foreseen that treaties might be terminated, that treaties might even be abrogated, that it might be in the interests of our own country to terminate a treaty. They must have foreseen that. If they had meant for the Senate to be a

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party to the termination of treaties, I am constrained to believe that they would have had the foresight and the wisdom to have written that into the Constitution.

Mr. President, I simply urge my distinguished colleague from Virginia, Mr. BYRD, he having raised a very important question here, to consider withdrawing the amendment at this time and pursuing it before the Committee on Foreign Relations. It is a matter that is appropriate for thorough consideration by that committee.

No hearings have been held on this amendment. There has been no consideration of it by the Foreign Relations Committee. Again I say that the members of the committee already have indicated on the record their willingness to hold hearings and to give serious study to the issue. I think that is the appropriate manner for dealing with this question. I do not believe that the Taiwan Enabling Act is the appropriate vehicle. It is not a treaty.

In the future, if the Senate wants to write into any treaty a provision that will outline clearly the termination of such treaty, or the abrogation of it, that it is a question which will have to be decided jointly between the President and the Senate, it can do so. Also, it can say in that provision whether or not the Senate should terminate by a majority vote or by a two-thirds vote, or whatever.

Without the kind of study that is needed, I hope that the Senate would not be forced to take action at this point, and on this vehicle, on an amendment that has such far-reaching implications. It would be a blanket requirement. In order for all treaties to be terminated in the future, the approval by the Senate would be required. By what vote? A two-thirds vote? A three-fifths vote? What?

It may be in the interests of this country—who knows?—to terminate some other treaties down the road. It may be in the security interests of this country to terminate some other treaties down the road. Who knows? We may have a Republican President at some far distant time in the future, or we may have a Democratic President. But, whichever, that President, as the Chief Executive of this country, is in the best position, I believe—and apparently the Founding Fathers thought so—to terminate a treaty; and they left it open to the Senate to write provisions in any treaty. They left it open to the Senate.

There is nothing in the Constitution that prevented the Senate in 1954 from writing a provision therein which said that either party shall have the power to terminate, with the understanding that the U.S. Senate, on the part of the United States, shall first approve the termination.

The constitutional forefathers left that door open for us. They did not leave the door open when it came to making treaties. They said that the President of the United States shall have the power, by and with the advice and consent of the Senate. The door is closed. The Pres-

ident cannot make a treaty without the approval of the Senate, and I have so said to Mr. Carter in connection with SALT. I said:

If an agreement is sent up there, count me out. If it is done by way of an Executive agreement, count me out—o-u-t.

I am against it to start with, should it be sent in by an agreement. The constitutional forebears closed the door there. It has to be done with the advice and consent of the Senate. It would not be so with the termination of a treaty. They did not say that.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. So I do plead with my friend from Virginia, who is a very understanding Senator, who is a very able Senator, who wants the Senate to do the right thing in the interests of the United States; and I am sure he believes that the right thing can best be done if the Senate is well informed through adequate hearings. If he would do that, the Senate then would be in a position to proceed with its hearings in the Foreign Relations Committee and would not have to cast a vote today, when Senators are not prepared. I am not prepared. I have my own viewpoint, hastily arrived at through reading a couple of lines in the Constitution and thinking about it overnight. But what other evidence do I have? I need other evidence. I need a report on the part of the Foreign Relations Committee. I need its testimony. I need to read its hearings so that I will be guided properly and so that I will not vote in the wrong way. I intend to vote against the amendment, and I intend to vote for a tabling motion, if such a motion is offered, but that might not be the right thing.

I urge the Senator to consider withdrawing the amendment and letting the Foreign Relations Committee conduct hearings on the matter, and let us approach it from an informed standpoint, after adequate testimony has been adduced and thorough study has been had. I cannot read any Senator's mind, but there are Senators today who, for political reasons or otherwise—they may be running for reelection next year—may feel constrained, in the light of events and for other reasons, to vote for the amendment.

I think it is not. I hope they would not be forced to do that without adequate preparation and study on a matter of such far-reaching constitutional implications, and I mean they can be far reaching with respect to security interests of this country in the future.

For their sake, I hope they will not be forced to vote on this issue today. It is the wrong vehicle. It is the wrong time. It is under the wrong circumstances. It will not affect one way or the other this particular subject that is before the Senate, basically, the Taiwan Enabling Act. And for all of those reasons, I hope that the distinguished Senator from Virginia will consider withdrawing the amendment and that he will withdraw it.

I respect him if he does not. I respect his right to disagree with me. But I

know that he will think about it. In consideration of the need for all Members of the Senate to be fully informed on this subject before they vote one way or the other, I hope that he will withdraw the amendment.

Now I yield to my friend from Arizona, Mr. GOLDWATER.

Mr. GOLDWATER. I thank my good friend and leader.

I just wished to read a piece of testimony that I gave before the Foreign Relations Committee to show that this is not exactly new:

I wish to remind the Senate that the issue before us is not novel. It is not new.

In 1856, the Foreign Relations Committee took up the identical question before us today.

They examined the question of how a treaty should be terminated when the treaty itself provides for cancellation after notice given by either party.

The Committee had no difficulty in answering the question. In its official report, our Senate Committee in 1856 said that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in the President and Senate."

The report went on to say that a treaty can also be repealed by joint action of both Houses of Congress, but it rejected any idea that the President could do it alone.

Yesterday I put a list of 51 treaties in the Record that have been abrogated or terminated, as some would prefer, since the beginning of our Republic. If my memory serves me correctly only one treaty of mutual defense was included, and that was abrogated by the entire Congress and later the President approved the action.

So this is not new, and I will say to that the Constitution is not exactly clear in this whole field.

I asked a question earlier that no member of the Foreign Relations Committee has answered. I wish to know what the opinion, for example, of the majority leader might be on any President—I do not care if he is a Republican, if we live that long, or a Democrat if we have to put up with that—but would he wish to have any President have the power to say, "We are going to pull out of the United Nations tomorrow," or "We are going to leave NATO tomorrow," or "We are going to cancel our Japanese treaties"?

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. GOLDWATER. The majority leader has the floor.

Mr. ROBERT C. BYRD. I had hoped the Senator was letting me yield to him on his time.

Mr. GOLDWATER. Gladly, but I have to get permission from my boss.

Mr. HARRY F. BYRD, JR. The Senator from Arizona does not have time.

Mr. ROBERT C. BYRD. I thought it was on the Senator's time.

Mr. GOLDWATER. I assume it is on the Senator's time. I will be glad to split it with the Senator.

Mr. ROBERT C. BYRD. All right.

Let me just respond, if I may, to the distinguished Senator.

No, he has referred to a committee of the Senate 123 years ago that in the

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light of circumstances at that time issued a report saying thus and so.

The Senate did not say it. It was the committee.

Second, he has asked how I feel about the President of the United States terminating this treaty or that treaty, and then he mentioned the NATO Treaty.

I cannot envision any President, Republican or otherwise—or Democratic—terminating our responsibilities under NATO, because that would run against the security interests of the United States. Everyone knows that.

But there might be a treaty which would be not in the security interests of the United States which the President would feel he should terminate and which he had the right to terminate in accordance with the provisions thereof.

I say leave it to the judgment of that President at that time and under those circumstances.

It was clearly within the province of the Senate when the Mutual Defense Treaty with Taiwan was written in 1954 to have included in its provisions that the approval of the Senate should be had for termination.

I think it comes at a late date now to claim that, and the Senator from Virginia does not so claim. He says it would not have affected that treaty, and that is one of the basic reasons why I hope he will withdraw his amendment on this occasion, because it will not affect that treaty.

It can go before the Foreign Relations Committee. Hearings can be held. They will be held. And the Senate then will be in a position to knowledgeably, knowingly, and in an informed manner vote on the issue at an appropriate time.

I thank the Senator.

I thank the Senator for yielding.

Mr. HARRY F. BYRD, JR. I have so little time. I yield myself just 1 minute.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 1 minute.

Mr. HARRY F. BYRD, JR. Mr. President, I wish to point out that the Constitution does not say how to repeal a statute. It does not say the power to terminate a law is shared with Congress. But it is obvious Congress must act to terminate a law.

At this point, also, Mr. President, I wish to print in the Record information that was submitted yesterday by the Senator from Arizona (Mr. GOLDWATER) listing 51 treaties which were terminated by legislative action, and I ask unanimous consent that it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

#### TERMINATION OF TREATY OR TREATY PROVISION WITH LEGISLATIVE ACTION (51)<sup>1</sup>

##### A. Termination with legislative approval or ratification (48)<sup>2</sup>

Authorizing legislation, treaty, and total treaties affected:

Act of July 7, 1798, 1 Stat. 578, French-American Treaties of 1778-1788, 4.

H.J. Res. of April 27, 1846, 9 Stat. 109, Convention on Boundaries with Great Britain, 1.

S. Res. of March 3, 1855, 9 Senate Executive Journal 431, Commercial Treaty with Denmark, 1.

J. Res. of Jan. 8, 1865, 13 Stat. 566, Reciprocity Treaty with Britain, 1.

J. Res. of June 17, 1874, 18 Stat. 287, Treaty of Commerce and Navigation and Commercial Convention with Belgium, 2.

Act of February 26, 1883, 22 Stat. 641, Amity Treaty with G. Britain, 1.

J. Res. of December 21, 1911, 37 Stat. 627, Treaty of Commerce and Navigation with Russia, 1.

Seamen's Act of March 5, 1915, 38 Stat. 1164, Several treaties and conventions, 26.

S. Res. of May 26, 1921, 61 Cong. Rec. 1793, International Sanitary Convention, 1.

Treaty on Principles and Policies Concerning China (Nine Power Agreement) of February 6, 1922, 2 Bevans 375, Treaty of Commerce and Navigation with Japan, 1.

1944 Chicago Convention on International Civil Aviation, 3 Bevans 944, 965, 1928 Pan American Convention on Commercial Aviation, 1.

1946 Convention for the Regulation of Whaling, 4 Bevans 249, 1937 Convention for the Regulation of Whaling, 1.

Trade Agreements Extension Act of 1951, 65 Stat. 72, Treaties of Friendship, Commerce and Consular Rights with Hungary and Poland, 2.

1948 Convention on Safety of Life at Sea, 1929 Convention on Safety of Life at Sea, 1. Foreign Assistance Act of 1961, 75 Stat. 424, Commercial Convention with Cuba, 1.

Export Control Act of 1948, 50 USC App. 2021 et seq.

Trading with the Enemy Act, 50 USC App. 1 et seq.

Mutual Assistance Act of 1954, 22 USC 1934.

Inter-American Treaty of Reciprocal Assistance of 1947, 4 Bevans 559.

Cuban Resolution of 1962, 76 Stat. 697.

Byrd Amendment of 1971, 85 Stat. 427, § 503, "One aspect of our treaty obligations under the U.N. Charter." *Diggs v. Shultz*, 470 F.2d 461 (D.C. Cir. 1972), 1.

Fishery Conservation and Management Act of 1976, 16 USC 1801, Three Conventions on Fisheries, 3.

B. Termination with implied authority conferred by inconsistent legislation (3)<sup>3</sup>

Date of legislation, treaty, and total treaties affected:

Tariff Act of July 24, 1897, 30 Stat. 151 Commercial Convention with Switzerland, 1.

National Industrial Recovery Act of 1933, 48 Stat. 195, Convention on Abolition of Import and Export Prohibitions and Restrictions, 1.

Trade Agreements Act of June 12, 1934, 48 Stat. 943, Treaty of Commerce and Navigation with Italy, 1.

#### FOOTNOTES

<sup>1</sup> One incident of Congressional ratification of a Presidential notice is not included in the table because notice was withdrawn before the treaty was terminated. In 1865, shortly after President Lincoln had notified Great Britain of our withdrawal from the Rush-Bagot Convention regulating naval forces upon the Great Lakes, Congress defended its power in the field by passing a Joint Resolution based on the principle that Lincoln's action was invalid until ratified and confirmed by Congress. H.J. Res. of Feb. 9, 1865; 13 Stat. 568.

<sup>2</sup> Congress terminated all existing treaties of the Hawaiian Islands with foreign nations in the Joint Resolution of July 7, 1898, but the action is not included in the table because those treaties were not ratified under the Constitution.

<sup>3</sup> Another treaty which was terminated because of inconsistent legislation is the 1891 Treaty of Amity, Commerce and Navigation with the Independent State of the Congo. In 1916, Belgium, which had annexed the Congo, twice denounced the whole treaty after Congress directed the termination of a substantive article thereof in the Seamen's Act of

1915. The treaty is counted only once in the above tables, being included with those treaties affected by the Seamen's Act in Table A. Termination of the treaty is reported by the State Department under the heading "Abrogation of Treaties and Provisions of Treaties which Conflicted with the Seamen's Act of March 4, 1915," Foreign Relations, 1920, vol. 1, pp. 207-209.

Mr. HARRY F. BYRD, JR. Mr. President, one further word. I shall, of course, take under advisement and give full consideration to the wishes and desires of the majority leader.

The PRESIDING OFFICER. The Senator's minute has expired.

Mr. HARRY F. BYRD, JR. I yield myself one-half additional minute.

The PRESIDING OFFICER. The Senator from Virginia is recognized for one-half minute.

Mr. HARRY F. BYRD, JR. I will not make a decision at this moment, but I will, of course, give full consideration to his wishes, although I see very little need for it.

Mr. CHURCH. Mr. President, how much time remains to the opponents of this amendment?

The PRESIDING OFFICER. The Chair will advise that 11 minutes remain.

Mr. CHURCH. Mr. President, I reserve 5 minutes of that time to reply to the distinguished Senator from Virginia.

First of all, let me say to him that this summer the committee will have before it a major treaty on treaties, the Vienna Convention on the Law of Treaties, at which time we shall be conducting thorough hearings, that could include the very question that has been raised by the distinguished Senator.

I should think that would be an appropriate time to consider all of the possible ramifications of the very important issue he has raised.

I wish to assure the Senator that at that time or at some other appropriate time the committee will examine this question in depth.

I reiterate the request of the majority leader that the Senator from Virginia give serious consideration to withdrawing the amendment at this time, because I feel that it is inappropriate as a part of this bill. Furthermore, before we pass judgment on a question of such far-ranging ramifications, we should have the benefit of thorough hearings and expert testimony.

For example, Mr. President, the resolution as it is presently written raises questions on its face. Even if we were to accept the arguments offered in support of the amendment, which I cannot accept, the arguments raise a question as to why the amendment has been framed in such a way as to be limited to mutual defense treaties.

In other words, if the Senator from Virginia or the Senator from Arizona are correct in their assertion that a treaty may not be terminated except with the consent of the Congress, then why should this sense of the Senate resolution be limited to one kind of treaty, namely, mutual defense treaties? Even on its face, the amendment is not consistent with the argument that has been advanced in support of it.



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The majority leader has already pointed out that under the Constitution the advice and consent of the Senate is required only for the purpose of making treaties. When it comes to their termination, it is true that the Congress can take part, and on numerous occasions in the past, that indeed has happened.

If the Congress had wished to initiate the action that would terminate the Mutual Defense Treaty with Taiwan, then there is nothing to prevent the Congress from passing a resolution—a joint resolution—calling for the termination of that treaty which, if signed by the President, would be an act of law. And, under the well-known doctrine of supersession, the last act of the Congress, being last in time, would still supersede the mutual defense treaty, and once bearing the force of law would operate to terminate the treaty.

So I do not argue with the proposition that it is appropriate for Congress when it wishes to assert its right to terminate treaties simply by passing a resolution which, when signed by the President, has the force of law and, being the last statement on the subject, supersedes any previous law. That is how we change statutes and treaties.

The PRESIDING OFFICER (Mr. HEFLIN). The time of the Senator from Idaho has expired.

Mr. CHURCH. I ask unanimous consent for 3 extra minutes, Mr. President.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. CHURCH. In the current case we happen to have a treaty which includes in its own text the manner by which it may be terminated. In article X the treaty itself provides:

Either party may terminate it 1 year after notice has been given to the other party.

When this treaty came before the Senate in the first instance, when the Senate by a two-thirds vote ratified the treaty, it also ratified article X which contains the method whereby the treaty may be terminated. That is every bit as much a part of the treaty as any other article.

So the Senate placed its imprimatur of approval upon this method for terminating this particular treaty.

The President has acted in conformity with article X, and I think there is no question—at least there is no question in my mind—that he has acted in an appropriate manner, and that by giving this notice upon the expiration of the year's period, the treaty will be terminated according to its own terms.

I close, Mr. President, with a statement from one of the foremost authorities on international law. I quote from the Restatement of the Foreign Relations Law of the United States by the American Law Institute, from section 163 which reads as follows:

Under the law of the United States, the President, or a person acting under his authority, has, with respect to an international agreement to which the United States is a party, the authority to take the action necessary to accomplish under the rules stated in section 155 the termination of the agreement in accordance with the provisions included in it for that purpose.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. CHURCH. I thank the Presiding Officer.

I ask unanimous consent that the remaining time be given to the distinguished Senator from New York, the ranking member of the Committee on Foreign Relations.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I have expressed to Senator BYRD yesterday, and I express again, my feeling that it is a great service to the Senate, and that this question will be resolved, and I will join—and I think he has known me long enough to take my word for that—actively and vigorously in resolving it, with his leadership.

I am deeply concerned about the adoption of this resolution now for this reason, Senator: The Senator from Arizona, exercising his right as an American, has started a suit. If the Senate declares even in a sense resolution that the action of the President, in its opinion, is not lawful, it leaves a very grave legal question as to whether we are complying with the agreement we are really implementing here with the People's Republic of China, because the communiqué says:

The United States of America recognizes the Government of the People's Republic of China as the sole legal government of China.

Therefore, if we are going to violate that then we have violated what we started out to do, and this whole effort and the whole edifice fall.

So my point is because of the frame of reference in which this amendment is cast, and quite without the Senator from Virginia or any other author desiring it, I agree with that, and I notice the Senator has put it in writing, and I do not think you can help it when the Senate says in its opinion that this is an unlawful act, because the President has no such power, then you cannot avoid the legal consequences which are that the President has not yet acted until somebody else, stronger than we, more authoritative does so, and that is a tough one because I think the Supreme Court is very likely to dismiss this suit on the ground that it is a political question.

So if he has acted unlawfully what are we here for? This whole legislation collapses. That is why I am concerned about it.

That is why I would add, for whatever it is worth, my assurances to those of the leadership and those of Senator CHURCH, our chairman, to most assiduously and faithfully do this job.

The VICE PRESIDENT. All time of the proponents has expired.

Mr. HARRY F. BYRD, JR. I thank the Senator from New York. I yield 2 minutes to my colleague from Virginia.

Mr. WARNER. I thank the Senator. As a cosponsor with the senior Senator from Virginia of this amendment, I address to the opposition a question: Since the Constitution provides the procedures for the creation of a statute or a treaty (although it does not in either case specifically provide procedures for repeal), and since it does declare both statute and treaty, alike, to be the su-

preme law, why does it not logically follow that treaties, like statutes, can only be repealed by action of the Senate?

I bring to your attention article VI of the Constitution which says:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

How can the President, with just a stroke of the pen, remove a part of the supreme law of the land?

The distinguished Senator from Arizona provided for the record historical facts with respect to past treaties, the ones that have been either abrogated or terminated by the President after consultation with this body.

I believe that only four treaties in our history have been concluded without the joint procedure. One where the other party (country) went out of existence, and the remaining three where the treaties became totally outdated and did not require action. Thank you Mr. President.

The VICE PRESIDENT. The time of the Senator has expired.

The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, article 10 of the treaty with Taiwan states that either party, and that means either government—in the United States the Government means both the legislative branch and the executive branch—either government may terminate the treaty 1 year after notice has been given to the other party.

So it may be terminated during this year.

I emphasize again what I said before, and what other Senators have continued to insist, that the Constitution says nothing about how a treaty shall be terminated. I say the Constitution says nothing about how a law shall be terminated. The Constitution does not say how to repeal a statute. It does not say the power to terminate a law is shared with Congress, but it is obvious that Congress must act to terminate a law.

Frankly, this amendment is so clear that I see no reason to hold public hearings on it, or any other hearings on it.

I will read it again for the Record:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and any other nation.

Senator GOLDWATER has put into the RECORD 51 treaties which have been terminated by legislative action.

As I say, I see no reason for an amendment as clear as this to be the subject of special hearings by the Foreign Relations Committee. I have no objection to it, however.

I want to give full consideration, of course, to the views expressed by the distinguished majority leader. I would give full consideration to a unanimous-consent request that if this amendment is withdrawn, the Foreign Relations Committee will consider and will report back to the Senate this precise amendment, expressing any views it wishes to on it, will report back this precise amendment

for an up-or-down vote on a date certain. I prefer to vote today. I think this matter is of great importance. I think it should be determined now. But I am willing to give some consideration if a firm, ironclad agreement can be made to report this amendment back in 30 days; that it become the pending business before the Senate, and that an up-or-down vote occur on the amendment. Of course, the Foreign Relations Committee can present any viewpoint it wishes. They can say it is a lousy amendment and should be voted down. They can make any statement they wish. But I would seek an up-or-down vote on the amendment at a time certain.

If those who are opposing this amendment today want to enter into such an agreement, I will give it consideration. But I certainly will not do it merely on the basis that the Foreign Relations Committee will hold hearings on it and may or may not take any action on it. This is a vitally important matter. It affects the future of all of our treaties. It affects the future of the U.S. Senate. It affects the future of our Nation, as I see it, if we are going to say by a vote today, an unprecedented vote, if this amendment is voted down, that the President of the United States, in the sense of this Senate, has the right unilaterally to nullify a treaty.

Mr. President, how much time do I have remaining?

The VICE PRESIDENT. The Senator has 3½ minutes remaining.

Mr. HARRY F. BYRD, JR. Mr. President, I want to say again this amendment does not express either approval or disapproval of the President's decision to give notice under article 10 of the Mutual Defense Treaty between the United States and the Republic of China. The amendment does not take from the President any power he now has. It does not prevent the President from expressing the intent to abrogate a treaty.

It does, however, express the view of the Senate that under the Constitution the President cannot unilaterally nullify a treaty. So far as the Senator from Virginia is concerned, that is the position that I think the Senate of the United States should take, that a President cannot unilaterally nullify a treaty.

Mr. CHURCH. Will the Senator yield so I might respond?

Mr. HARRY F. BYRD, JR. Yes.

Mr. CHURCH. I would be happy to assure the Senator that the Foreign Relations Committee would hold hearings on the subject of the termination of treaties. We would look to the best authorities we could gather for that purpose. We would consider the Senator's proposal, and we would report back to the Senate on the subject in such form as the committee believes appropriate.

The Senator will always then have the opportunity to substitute his amendment for any proposal the committee might wish to offer.

I could not commit the committee in advance to report back the Senator's amendment in exactly the same language that the Senator has now presented it.

Mr. HARRY F. BYRD, JR. I thank the Senator. I will make the unanimous-con-

sent request, and the Senate can do as it wishes. I ask unanimous consent, Mr. President, that if the Senator from Virginia and my associates agree to withdraw this amendment, that the Foreign Relations Committee will hold hearings, or do whatever it wishes to do—I do not think hearings are necessary—hold hearings or do whatever it wishes to do, and report this precise amendment back to the Senate and it become the pending business on May 1, and will continue to be the pending business until it is disposed of either by approval or by tabling.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, would the Senator not consider this type of a request: That the Senator's amendment be referred to the Committee on Foreign Relations; that the Committee on Foreign Relations hold hearings on the Senator's amendment, and that the Foreign Relations Committee be required to report back no later than, let us say, 60 days. We have to give them more time than May 1, because under the Budget Reform Act we have to have the first budget resolution disposed of before May 15, so we run into a lot of problems that, by law, we are already tied to.

Mr. President, I ask unanimous consent that the Senator from Virginia may have 2 additional minutes and the Senator from Idaho 2 additional minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. No later than 60 days, or we can make it 90 instead of 60, that the committee report back that amendment, as amended, if amended.

I do not think we can put a committee into a straightjacket in their conducting hearings, the Agriculture Committee, the Small Business Committee, or whatever committee, to say that it will hold hearings and be required to report back that particular resolution, word for word, comma for comma, semicolon for semicolon, with no change, and that that measure then become the pending business in the Senate.

I hope the Senator would, with the assurance by the Senate, buy an order by the Senate itself that the committee report it back—the chairman and ranking member would do that anyway—report back no later than 90 days. Then, as majority leader, I am willing to add the provision that it then be the pending business, unless, at that particular point—well, the pending business following action on any business that then may be pending. We may have an appropriation bill up or we may have war powers, we may have—who knows what we may have up at that point?

That, it seems to me, is a good arrangement. It gives the Senator the assurance that his resolution has to be the resolution that the committee discusses, conducts hearings on, his amendment is going to be reported back as amended if amended, his amendment is going to be the pending business before the Senate at a particular point in this session. That gives the Senator assurance that the Senate is going to have an opportunity to act on this amendment or resolution.

I hope the Senator will allow me to

make that request which, coming from the majority leader, I think, says the majority leader cannot change it. He cannot schedule anything, he is bound by the order. The committee cannot change it. It is bound by the order to report the Senator's amendment back as amended if amended. The Senator can continue with all his rights as a Senator to offer his amendment to that proposal if it is reported back. I hope the Senator will allow me to interpose that request.

Mr. President, I ask unanimous consent that there be an additional 15 minutes of debate, to be equally divided between Mr. CHURCH and Mr. HARRY F. BYRD, JR., in order that this matter might be resolved.

Mr. FORD. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. FORD. Does this extend, then, the 12:30 vote, or will it come at 1:30?

Mr. HARRY F. BYRD, JR. What is the unanimous-consent request?

Mr. ROBERT C. BYRD. That there be an additional 15 minutes on this matter; not to exceed 15 minutes. We cannot guarantee that a quorum can be called off in 5 minutes.

The VICE PRESIDENT. Is there an objection?

Mr. HARRY F. BYRD, JR. Reserving the right to object, I am not sure I understand what the unanimous-consent request is.

Mr. ROBERT C. BYRD. This unanimous-consent request is simply that the time be extended for not to exceed 15 minutes before acting on the Senator's amendment. It probably will not take 5 minutes.

Mr. HARRY F. BYRD, JR. I do not object.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEFLIN). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I had hoped that the distinguished Senator from Virginia would accede to the request which I presented, which I felt was a very reasonable request, allowing the Committee on Foreign Relations to conduct hearings on the resolution offered by the Senator from Virginia, which is in the form of an amendment at this point, which would require that the committee report back within 90 days, no later than 90 days—or, if the Senator wished to make it 60, that would be agreeable, no later than 60 days—the Senator's resolution as amended if amended, and that it then be the pending business before the Senate following the disposition of whatever the pending business was at that particular time.

Mr. President, that is a very reasonable request. It would allow the Foreign Relations Committee, which has jurisdiction over this type of legislation, to conduct hearings, to get eminent witnesses to come in, pro and con. Then the Senate

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itself would have an opportunity to vote in a knowledgeable way, after they have been adequately informed, on a question that could have far-reaching constitutional implications and which ought not to be submitted at this time on a vehicle which the distinguished Senator from Virginia, himself, says would not be affected by this. But it is a meaningful proposal.

The Senators are going to vote. The Senator does not agree to this request. The Senators are going to have to vote on a matter that has far-reaching constitutional implications and they are going to vote on the basis of their emotions, I suppose, their political intuitions, rather than on the basis of facts carefully secured by the Committee on Foreign Relations, thoroughly studied, and with all Senators having an opportunity to have a committee report, printed hearings, and thus be in a better position ably and knowledgeably to vote on such a far-reaching question.

Mr. NELSON. Will the Senator yield?  
Mr. ROBERT C. BYRD. Yes.

Mr. NELSON. I should like to appeal to the distinguished Senator from Virginia to go along with this request. This is an important issue which, for some reason or another, in the whole history of the Republic, so far as I know, has never been addressed. However, on its face, I think the Senator from Virginia is correct.

I think if there were no other choice, I would vote for the amendment as drafted by the Senator from Virginia, and after committee hearings I probably will. However, in that process, something may be raised that would cause me to think the phrasing ought to be somewhat different.

In any event, in principle, I am in agreement with the distinguished Senator from Virginia. But if there is an insistence that the vote occur today, I simply will have to vote against it.

I do not think we ought to be legislating on an historically important principle, involving all kinds of implications, without at least going through the normal process of having hearings and constitutional authorities testifying.

I suspect they will come down on the side of the distinguished Senator from Virginia. But I think we ought to use the process, since nothing has been done about this in 200 years, and I do not know why we could not wait another 60 days.

Mr. ROBERT C. BYRD. I thank the Senator.

On top of that, there is a case pending, Mr. GOLDWATER has presented a case dealing with the President's action in terminating the Mutual Defense Treaty with Taiwan, and that case would not be prejudiced one way or the other by a Senate vote today.

I just hope the Senator from Virginia and his colleagues who are supporting him in the amendment would think again one more time, give it another chance, and let the Senate order the proposal I have presented, or would present, as previously outlined.

It is a fair proposal. It is responsible.

It lets everybody have a chance to know what they are voting on.

I may very well vote with the Senator at that time. But today I would have to vote against the proposition. As Senator NELSON says, he would have to, also.

It does put Senators in a difficult position to cast a vote on a matter of this kind with such far-reaching constitutional implications without a word of testimony, without a word of hearing, without a committee report.

Mr. JOHNSTON. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The time has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate may proceed for 5 additional minutes, and that the Senator from Idaho may control half of the time and the Senator from Virginia half.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask for recognition simply to plead with my friend, the Senator from Virginia, to let this matter go to committee.

I say that because on yesterday, persuaded that he was right, I told the Senator from Virginia I would be with him on this particular matter.

On reflection overnight, I am troubled by the implications of the resolution. I am also cognizant of the fact that nothing would be lost to go to committee and report back within a period of 90 days because the notice, as given by the President on Taiwan, is not affected at all by this amendment.

So that if we report it back in 90 days, I expect to be with the Senator from Virginia. But I am not sure and am not prepared to do so today.

I would hope we could go to committee with this matter and find out if there are any implications that are not apparent on one day's study on the matter.

I thank the Senator.

Mr. HARRY F. BYRD, JR. May I ask, what assurance would there be that the Senator from Virginia could get an up or down vote on this precise amendment 60 days from now, as it might be?

Mr. CHURCH. If I may respond—without prejudging what the committee might recommend after hearings—the Senator would always be in a position to offer this precise language as a substitute for the language that was recommended by the committee, should he wish to do so; and I am prepared to have that decided then by an up or down vote at the appropriate time once the committee has had an opportunity to do its work on such a far-reaching issue.

Mr. JAVITS. If I may add one other thing, Senator CHURCH and I will pledge ourselves to see that the Senator has that opportunity, and that procedures not interfere with the right of the Senator—not just the right, but the right under this agreement—to substitute anything we proposed in hoc verba, according to the way he has proposed it.

Mr. HELMS. On an up or down vote?

Mr. JAVITS. On an up or down vote, with no tabling.

Mr. HARRY F. BYRD, JR. The Senator from West Virginia indicated a 60-day time frame would be satisfactory.

Mr. ROBERT C. BYRD. I said 90 days earlier, hoping that by doing so we would not come in conflict with the expired deadlines in connection with programs, or with requirements we have to meet by law, such as the action on the first concurrent budget resolution which has to be completed by May 15.

I would like to at least leave a little room for those contingencies.

Now, this is March, and then we have April, that is 60 days. May 15 is a deadline we know we have to meet under the law on the first concurrent resolution.

Could we not say not later than 90 days? That assures the Senator he is going to have a decision one way or the other on the matter.

We are talking about a different 30 days right now. But I would have to be conscious of the other problems that the Senate may be confronted with in connection with its programing of legislation, and legislation that by law we have to dispose of by certain deadlines.

Mr. JAVITS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. I just made the suggestion to Senator CHURCH, he has to agree, but I make the suggestion to the Senator that the report of the committee come within 60 days, and the majority leader agree that matter be made the pending business within 90 days. That gives us the flexibility.

Mr. CHURCH. That is agreeable to me.

Mr. ROBERT C. BYRD. I hope very much that the Senator from Virginia would accede to that request—

Mr. HARRY F. BYRD, JR. Does that mean it would be made the pending business not later than the week of the 4th of June, for example?

Mr. ROBERT C. BYRD. I have not had the opportunity to look at the Calendar, but it would be that the majority would be bound by order of the Senate to make the resolution reported by the committee the pending business no later than 90 days from today.

Mr. HARRY F. BYRD, JR. The resolution reported by the committee, but the resolution reported by the committee, I judge from what the majority leader said and the chairman of the committee said, may not necessarily be this resolution.

Mr. ROBERT C. BYRD. It will be that resolution with the Senator's number, his name on it, as amended, if amended. It may not be amended. But I would think that the Senator would not object to the committee's taking testimony and offering amendments, voting on amendments to the resolution, in the light of evidence adduced.

When the matter comes up on the Senate floor, the Senator from Virginia could offer his pending amendment, which would be sent to the committee as a resolution, as a substitute for whatever the committee reports; or he could offer a perfecting amendment to the committee's resolution as reported. He would maintain all his rights. The two managers of the pending bill, who would be the managers in that case, have as-

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sured him that he would get an up-and-down vote on his amendment.

This goes a long way, I say to the distinguished Senator from Virginia. Nobody probably has thought of the fact that his amendment, when offered, can be amended, whether it is a substitute or what. The amendment can be amended on the floor. They have offered to give him a vote up and down on his amendment as it is written right at this moment.

Mr. JAVITS. His amendment can be amended right now.

Mr. ROBERT C. BYRD. Of course.

Mr. JAVITS. Even after we vote on a motion to table.

Mr. ROBERT C. BYRD. There is no question about it.

The Senator really is being very fair in considering this request. He is being protected fully all the way around. He is being assured by the order of the Senate that the committee is going to report back the subject matter; that the majority leader will have to program it; and that the Senator will have an opportunity for an up-and-down vote on his amendment as presently written, if he wants to offer it that way to the resolution, if the resolution is changed in its terminology by the committee.

Mr. GOLDWATER. Mr. President, reserving the right to object, will the leader make a clarification? Did the leader make some reference to the amendment after—

The PRESIDING OFFICER. Will the Senator use his microphone?

Mr. GOLDWATER. It does not work. [Laughter.]

The leader made some reference to the amendment as reported by the committee being then referred possibly to "the committee on resolution."

Mr. ROBERT C. BYRD. No, I did not.

Mr. GOLDWATER. I got "the committee on resolution."

Mr. ROBERT C. BYRD. I was misusing it. That was an inexactitude in the use of terminology.

I referred to his amendment as being reported. It is an amendment now that Senator Byrd has offered. I assume that if it goes to the Foreign Relations Committee, it would have to be a resolution. When it is reported from that committee, it will be a resolution. Then the Senator could offer an amendment to that resolution.

I just sort of got my tongue tied a bit, I say to the Senator from Arizona, and used the word "resolution" when I may have meant the word "amendment." He certainly misunderstood me. I did not say what he thought I said.

The PRESIDING OFFICER. The additional time has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Virginia may have 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, as I understand the proposal, this entire matter would come back to the Senate, would be scheduled for action

one way or the other in the Senate, not later than the 7th day of June.

Mr. ROBERT C. BYRD. If that is the 90th day, yes, that would be correct.

Mr. HARRY F. BYRD, JR. Today is the 8th day of March. If we follow that procedure, it would be Friday, June 8.

Mr. ROBERT C. BYRD. I do not know, because May has 31 days and April has 30 days. But it is 90 days. Whether we use the new math or the old, it is 90 days. [Laughter.] Provided it is not a Sunday.

The Senator can be assured that whether this majority leader is still the majority leader on that day or not, the Record will be there, the Senate will be standing, and the majority leader at that time will be bound and shackled and chained—he can come in kicking and screaming; if he wants to—but that resolution will have to be made the pending business when the 90 days runs their course.

Mr. HARRY F. BYRD, JR. Mr. President, this is a vital matter. I do not think it is necessary to hold hearings on it. But I always like to cooperate with my colleagues. With the assurance that the matter will come before the Senate not later than 90 days from today and that the Senate will have an opportunity to debate all aspects of it. I will cooperate with the wishes of the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Virginia always has been cooperative and reasonable, and I knew that he would be in this instance. He just vindicated my feelings.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. WARNER. Mr. President, as a cosponsor with the senior Senator from Virginia, I join him in this measure. I compliment the senior Senator from Virginia, the majority leader, the chairman and the ranking minority leader of the Foreign Relations Committee for reaching this agreement. I believe the ultimate resolution of this issue will be one of the historic landmarks of the Senate.

Mr. HELMS. Mr. President, notwithstanding anything else, my understanding is that it will be reported by May 1.

The PRESIDING OFFICER. The time has expired.

Mr. ROBERT C. BYRD. I ask unanimous consent for 1 additional minute.

Mr. HELMS. What is the request?

The PRESIDING OFFICER. The time has expired.

Mr. CHURCH. Mr. President, I ask for 1 additional second.

The answer is "Yes."

Mr. HELMS. That is all I want to know.

Mr. HARRY F. BYRD, JR. In other words, the matter will be handled by the Foreign Relations Committee between now and May 1, and it will be reported back to the Senate on May 1.

Mr. CHURCH. By May 1.

Mr. HARRY F. BYRD, JR. By May 1. And the majority leader will schedule it for Senate consideration in a period of 90 days.

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. At this time, there are two pending unanimous-consent requests. The Chair asks that

Senators indicate on which request they would like action at this time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment that is now pending, by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), be withdrawn and that the amendment in the form of a resolution, bearing his name and the names of any other Senators he wishes to have as cosponsors, be referred to the Committee on Foreign Relations; that that resolution as amended, if amended, be reported back to the Senate no later than 60 days from today; that it be made the pending question before the Senate no later than 90 days from today, and that there be an up-and-down vote on his amendment at that time, if the distinguished Senator from Virginia feels constrained to offer it.

Mr. President, for the phrase "no later than 60 days," I substitute "no later than May 1."

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object—and I shall not object—the Senator from Virginia points out that there are two resolutions at the desk, both of which could be referred to the Foreign Relations Committee.

I ask unanimous consent that the name of the Senator from Wisconsin (Mr. PROXMIER) be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Is it clear, then, as to which resolution will be referred to the Foreign Relations Committee?

The PRESIDING OFFICER. Which one does the Senator want referred? One is a simple resolution and one is a joint resolution.

Mr. HARRY F. BYRD, JR. I would be willing to have both of them considered.

Mr. CHURCH. Very well.

Mr. ROBERT C. BYRD. We will take both, but the committee will report back only one.

Mr. HELMS. The language is the same. Mr. HARRY F. BYRD, JR. The language is identical.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The PRESIDING OFFICER. The Chair is informed, with respect to order No. 12 under "General Orders," that this is on the calendar. Should it also go to the committee?

Mr. ROBERT C. BYRD. May I answer the question?

I ask unanimous consent that the joint resolution that is on the calendar go to the committee, because when it comes back, it will be put back on the calendar.

Mr. HARRY F. BYRD, JR. Yes. And the simple resolution, which is identical to the amendment—

Mr. ROBERT C. BYRD. Also go to the committee.

The PRESIDING OFFICER. Without objection, both will go to the committee.

● Mr. HART. Mr. President, had a vote occurred on the Byrd amendment, I intended a vote against the motion to table the amendment submitted by the Sena-



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tor from Virginia, and I would like briefly to explain my reasons for doing so.

The amendment raises a fundamental issue of constitutional principle which rises above one's position on the issue of normalization of relations with the People's Republic of China. It is the issue of the Senate's role in foreign affairs and, more specifically, its role in the formulation and dissolution of treaties.

I do not challenge the President's primary and constitutionally unambiguous authority in the realm of foreign affairs. But the Senate must be forceful and consistent in exercising its own responsibilities in this area. Certainly this body—including many of my colleagues here who will vote to table this amendment—has fought hard over the past decade to restore to itself the constitutional powers which were eroded by executive usurpation and the failure of legislative assertiveness. I wish some of the supporters of this amendment would have been as assertive in exercising this responsibility on issues such as Vietnam and Cambodia. I wish those who felt as I did then about unilateral executive action in Cambodia would join me now in witnessing for the same principle.

My vote is not to turn back the clock and reverse the President's termination of the mutual defense treaty with Taiwan. Although I believe he acted in an unwise and unfortunate manner by ignoring the Senate, I nevertheless recognize the President's notification to Taiwan that the treaty will be terminated at the end of 1979 as a fait accompli. I have no desire to undermine the normalization agreement with the People's Republic of China.

Some of my colleagues have correctly noted that the amendment is not precise as to the procedure by which the Senate would give its approval and that it raises certain other ambiguities. Others have suggested that defining the Senate's proper role in treaty termination is too complex an issue to be settled at this time and should be addressed in subsequent hearings. I welcome such hearings, but I also cannot turn away from the principle raised by the Senator from Virginia. Consistent with my deeply held conviction that the Senate must meet its responsibilities in the field of foreign affairs, and reflecting my strong concern that unilateral executive action in terminating treaties is a dangerous precedent, I will vote to oppose tabling the amendment.○

#### POSTPONEMENT OF THE EFFECTIVE DATE OF RULE XLIV OF THE STANDING RULES OF THE SENATE

Mr. STEVENS. Mr. President, it is my understanding that the resolution I offered to amend the rules is to be voted on not later than 12:30 this afternoon.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Arizona may have 1 minute on the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I register my firm and unwavering opposition to Senate Resolution 93. This resolution undoes what the Senate has already agreed to. The Senate ethics resolution of the 95th Congress, Senate Resolution 110, limited the amount of outside earnings a Senator or highly paid staff member could earn. This provision was the subject of extensive debate, and agreement was finally reached that the amount of outside earnings to be allowed would be about 15 percent of salary.

The resolution before us today pushes back the effective date of this provision until January 1, 1983. Under the terms of Senate Resolution 110, this limitation should have gone into effect on January 1 of this year.

I am not unsympathetic to the concerns and needs of my colleagues. Yet, it seems to me that this body exercised its collective best judgment in the full glare of national publicity when it enacted Senate Resolution 110—a resolution that was hailed far and wide as a major reform in Senate ethics. We are now about to eliminate, at least for 4 years, the central feature of that reform. I cannot in good conscience, Mr. President, vote for this measure. And, I would urge each and every one of my colleagues to consider this matter carefully before casting a vote.

○ Mr. SASSER. Mr. President, I wish the RECORD to show that I oppose this resolution, Senate Resolution 93.○

○ Mr. EXON. Mr. President, if a rollcall vote would have been taken, I would have voted "no" on Senate Resolution 93.○

Mr. STEVENS. Mr. President, I move the adoption of the resolution.

Mr. METZENBAUM. Rollcall.

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to vote on Senate Resolution 93.

The question is on agreeing to the resolution.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM addressed the Chair.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator from Ohio have 2 minutes on the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to indicate my opposition to this proposal.

I think that when there were salary adjustments made that this matter was taken into account. I think it was part and parcel of the entire package.

I myself have strong reservations and objections to changing the effective date

and wish to be recorded in the negative in the event there is not a rollcall vote.

Mr. DECONCINI. Mr. President, I also wish to be recorded in the event there is not a rollcall vote in the negative.

Mr. BAUCUS. Mr. President, in the event there is not a rollcall vote I, also, wish to be on record as voting in the negative.

Mr. STEVENS. I move adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution. (Putting the question.)

The resolution (S. Res. 93) was agreed to, as follows:

*Resolved*, That section 313(c) of Senate Resolution 110, 95th Congress, is amended by striking out "January 1, 1979" and inserting in lieu thereof "January 1, 1983".

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

○ Mr. STONE. Mr. President, I was dismayed to learn that today, Thursday, March 8, the Senate passed by voice vote a resolution to defer for 4 years the implementation of Senate rule 44. This rule, which limits a Senator's outside earned income to 15 percent of salary, was a key feature of the Senate Code of Ethics which was adopted with much fanfare last Congress.

Suddenly, with no committee consideration, little floor debate and no rollcall vote, the Senate has put Senate rule 44 in limbo for 4 years. It is a step in the wrong direction and one which could lead to a total abrogation of the rule when those 4 years are up.

I regret that this important change in the Senate rules was made without a rollcall vote and if such a vote had been conducted I would have voted against the change in the rule.○

#### TAIWAN ENABLING ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 245, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people of Taiwan on an unofficial basis, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, on December 15, 1978, after hurried and secret

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negotiations, and without adequate consultation with Congress, President Carter announced that the United States would establish diplomatic relations with the People's Republic of China (PRC) on January 1, 1979, with an exchange of Ambassadors on March 1, 1979. At the same time, the United States gave the required 1 year's notice that it would terminate its Mutual Defense Treaty with the Republic of China (Taiwan) on December 31, 1979.

The main issue growing out of the Carter administration's sudden normalization of relations with the People's Republic of China is not really the recognition of Peking, but rather the "de-recognition" of the Republic of China on Taiwan. Our major concern today must be with the security of Taiwan and of American political, economic, and security interests there. America's allies and potential enemies throughout Asia and the world are watching this debate closely. They are looking for indicators of America's resolve to protect her interests and stand by her allies. The Taiwan legislation we pass today must send out a clear message that the United States will not sell out a friend, now or ever, to placate any powerful totalitarian regime.

The administration has proposed that unofficial relations with Taiwan be maintained after January 1 by a State Department manned, nongovernmental American Institute in Taiwan. This legislation, S. 245 is an outgrowth of that proposal. It speaks to the security of Taiwan and attempts to maintain all cultural and economic agreements and relations now existing between Taiwan and the United States. As such, it is far better legislation than that put forth by the Carter administration, but it must be improved. America's security interests in Taiwan must be clearly spelled out.

While Peking was anxious to normalize relations with the United States in order to counter Soviet influence in Asia, the Carter administration extracted no real concessions from Peking on the security of Taiwan. The United States has agreed to Peking's three major demands: Recognition of Peking as the legal government of Taiwan; withdrawal of all U.S. troops from Taiwan; and termination of the United States-ROC Mutual Defense Treaty. In addition, the United States has agreed to a moratorium on new arms sales to Taiwan for 1 year.

In exchange, the PRC has said that it will seek peaceful reunification of Taiwan to the mainland. However, Peking has very clearly refused to renounce the use of force against Taiwan. Peking says it will permit the people of Taiwan to keep their own political and economic systems and security forces as long as they choose. But these verbal pledges apply only if Taiwan agrees to recognize Peking's sovereignty and does not permit foreign military bases. The PRC has made no formal commitments on these already very conditional promises, and the administration itself has done little to amplify them.

For example, the PRC has pointed to Hong Kong and Macao as examples of coexistence with different economic sys-

tems on territory claimed by Peking, but those entities have not recognized Peking's sovereignty. A more disturbing example of reunification involves the subjugation of Tibet, a process which many would describe as "genocide." We should not take the example of Tibet too lightly. We have seen recently in Vietnam that China is willing to use force to achieve its objectives, but the examples of the Korean war, the Sino-Indian war, and the bloody purges following the Communist victory on the mainland should have already told us that.

In my view, the Carter administration has taken a stronger pro-Peking tilt than was necessary to achieve normalization and, in the process, has endangered the people of Taiwan. The Carter administration rejected alternative ways to deal with normalization such as the "German model" of recognizing two Chinas. It rejected placing our Embassy in Peking with an official liaison mission in Taipei.

The Carter administration has even refused to give any governmental status to Taiwan. It is the Congress which is considering granting diplomatic immunity to Taiwanese officials and, despite promises that the United States would not interfere with United States-Taiwan cultural exchanges, the Carter administration has moved to close down some of the Taiwanese consulates.

The weakness of the Carter administration in negotiating with Peking and in failing to show resolve with respect to the security of Taiwan cannot be corrected completely by the Congress. We can, however, move to strengthen the legislation before us, S. 245.

For that reason, I have cosponsored the amendment proposed by Senator PERCY which would make clear that the security of Taiwan effects the security interests of the United States. I believe that the language in the bill as reported by the Foreign Relations Committee is not sufficiently strong. The words "of grave concern" do not carry in them the strong sense of commitment which I believe should be inherent in this legislation. Indeed, I believe that national leaders around the world will look upon the success or failure of Senator PERCY's amendment as a measure of American will and reliability.

Today, and in the years ahead, the Senate must also insure that the security of Taiwan is not compromised indirectly. For example, the Congress should make clear that it will not condone administration acquiescence in any form of discrimination by Peking against firms doing business with Taiwan, and it must force the administration to take a firm stand protecting Taiwan in international monetary and financial institutions and facilitating trade and investment between the United States and Taiwan.

In short, we must make sure that our political, economic, and security interests in Taiwan mature rather than erode.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BAUCUS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I would like to state my basic support for this legislation. I believe that it provides for the security of Taiwan and for uninterrupted continuation of warm and friendly relations with the people of Taiwan.

I do not believe that a relinquishment of concern for the fate of Taiwan should result from normalization of relations with the People's Republic of China. The Senate should clearly state its determination that the United States aid in maintaining the security of Taiwan and in maintaining fruitful trade and warm cultural relations with the people of that island.

This determination matches our desire to maintain the close and special intimacy which arises from our 30-year relationship with Taiwan. As a result of those relations, we have at present approximately 60 treaties with Taiwan covering such matters as trade, visas, and economic and technical cooperation. Our total trade with Taiwan was more than \$7 billion last year. Our investment in Taiwan is almost one-third of all foreign investment on the island. This relationship cannot and should not end.

If the People's Republic of China wishes to maintain good relations with the United States, it must let the peace of Taiwan stand as the first litmus test of our new relationship. Let us hope that the Government of the PRC was sincere when it declared in its message of January 1, 1979, that it "will take present realities into account" and will "respect the status quo on Taiwan \* \* \* in settling the question of reunification."

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

## AMENDMENT NO. 79

(Purpose: To express United States policy with respect to any resolution of the Taiwan issue by other than peaceful means)

Mr. PERCY. Mr. President, I call up my amendment No. 79 to the pending legislation and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY), for himself, Mr. GOLDWATER, Mr. HOLLINGS, Mr. TOWER, Mr. DECONCINI, Mr. HUDDLESTON, Mr. STEVENS, Mr. STONE, Mr. COHEN, Mr. WEICKER, Mr. PROXMIER, Mr. COCHRAN, Mr. MORGAN, and Mr. DANFORTH, proposes an amendment numbered 79.

Mr. PERCY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 14, lines 9 and 10, strike out "of grave concern to" and insert in lieu thereof "to the security interests of".

Mr. PERCY. Mr. President, I offer this amendment on behalf of myself and Senators GOLDWATER, HOLLINGS, TOWER, DECONCINI, HUDDLESTON, STEVENS, STONE, COHEN, WEICKER, PROXMIER, COCHRAN, MORGAN, and DANFORTH.

Mr. President, as the chairman of the Foreign Relations Committee knows, the Senator from Illinois has long favored normalization of our relationships with China, because it is in the national interest. China should take its rightful place in the community of nations.

I believe the distinguished chairman of the committee would remember my former professor at the University of Chicago years ago, Paul Douglas, against whom I ran for the Senate in 1966. He will remember him not only as a beloved colleague, but also as a wise man for whom we had infinite respect. Nonetheless, I did find some of his economic theories erroneous and I sharply disagreed with his judgment on some matters in foreign policy.

I certainly disagreed with him, when I ran for the Senate, on the Vietnam war. This issue sharply divided us.

Senator Paul Douglas was one of the founders of an organization formed for the purpose of keeping mainland China out of the United Nations and I opposed him on that particular issue. I felt it most unrealistic that a government representing, at that time, three-quarters of a billion people, since grown, should be kept out of the United Nations and should not be a full member of the international community.

So, as I have worked in the Senate, I have taken a deep interest in the affairs of the People's Republic of China. I was privileged to lead a delegation of Senators and Congressmen to China to study firsthand that remarkable country, and felt even more deeply at that time that the process of normalization should be expedited to the greatest possible extent. So I am fully supportive of the legislation before us and have enjoyed working with the chairman of the committee (Mr. CHURCH) and the ranking minority member (Mr. JAVITS) on considering legislation that would enable us to move forward.

I have felt in the past and still feel today that full diplomatic relations are not only realistic, but they are also in the mutual national interest of both China and the United States. Therefore, with no intention to jeopardize this process, I call up amendment No. 79 to section 114 of the Taiwan Enabling Act for myself and for my distinguished cosponsors. Section 114 of the legislation deals with a continuing and strong U.S. interest in a peaceful solution to the Taiwan issue. This is a subject that we have been privileged to discuss among ourselves at great length, that has been debated by the American public, and that has been discussed fully among the Members of this body and Vice Premier Teng when he was here, together with the distin-

guished ambassadors and members of the Chinese diplomatic mission in Washington. As we all know, the executive branch really did not want Congress to make any statement whatsoever on this issue. The Senate Committee on Foreign Relations felt differently. The committee and the Senate, I think, owe a great deal to Senator CHURCH and Senator JAVITS for persuading the executive branch that the American people's concern about the future of the people on Taiwan could not be ignored. A strong statement on the issue was absolutely imperative.

The fundamental thrust of section 114 is good and there is a great deal in the language that I support and I urge my Senate colleagues to support. We state in this section that it is U.S. policy to make clear that "the U.S. decision to establish diplomatic relations with the PRC rests on the expectation that any resolution of the Taiwan issue will be by peaceful means." We also state that we will maintain our capacity to resist force or coercion that would jeopardize the security or social or economic system of the people on Taiwan. And we state that we will provide defensive arms to the people on Taiwan. These are strong statements of U.S. expectations and intent and I wholeheartedly endorse them.

I do recommend to the Senate, however one change which I believe strengthens and clarifies the section. Section 114 (a) paragraph (3) reads:

It is the policy of the United States to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States.

My amendment would delete "of grave concern to" and would substitute "to the security interests of."

I believe this substitution of language is essential, because we have a responsibility to make to the PRC a clear statement of U.S. interests in a peaceful settlement of the Taiwan issue. We must not lead the Chinese to miscalculate or underestimate our interests. A clear statement reduces ambiguity and lessens the chances for misunderstanding.

Certainly, we, in taking any action, must take into account that succession of leadership takes place in our country and other countries. Therefore, we should make unmistakably clear in the language of this legislation how we feel on this matter.

The President did not obtain from the PRC a pledge on the nonuse of force against Taiwan. Perhaps this was diplomatically unobtainable, as the administration maintains. But the point is that China's spokesmen have been very clear in what they have said. Chinese Premier Deng Xiaoping told the committee during his recent visit to Washington that China will fully respect the realities on Taiwan. But he also maintained, when pressed on the issue, that China will not make a commitment to use only peaceful means. In other words, the Chinese have retained use of force as a definite option. Vice Premier Deng was frank with us. He did not worry about the consequences for normalization.

He believed, as I believe, that it is best to be frank in exchanging views. When we agree, we agree to disagree and do so openly and we can each express ourselves. I think we have that obligation today.

Now it is our turn to be equally frank. We must state that a PRC effort to resolve the Taiwan issue by other than peaceful means would be a threat to the security interests of the United States.

I urged my colleagues on the Senate Foreign Relations Committee to adopt this language, but it was rejected.

One argument made against my amendment was that it might derail the normalization process. I reject this argument. We should not muddy our definition of U.S. interest because we are afraid of offending PRC sensitivities. Vice-Premier Deng did not mince words when he refused to pledge nonuse of force against Taiwan because of any concern that normalization would not proceed. Vice-Premier Deng was not concerned about offending the United States when he said in Tokyo, immediately following his tour here, that the United States had shown a lack of direction on the Iranian crisis and had mishandled it. The Chinese were not concerned about derailing normalization when they stated that they must "punish" Vietnam and when they soon thereafter invaded Vietnam. The Chinese say what they mean and we respect them for it. Now we must say what we mean and the Chinese, in my view, will respect us for it.

I do believe, even though there is sometimes a different approach taken in the field of diplomacy, we are still dealing with human beings. The experience of the Senator from Illinois has always been that a relationship is more normal, natural, and healthy and more long-lasting when friends are good enough to speak frankly to each other. I do not really believe that the Chinese would respect us if, knowing we felt deeply about something, we did not forthrightly, frankly, and honestly express exactly how we feel in important documents as is the legislation presently before us.

President Carter has declared that the United States could go to war over Taiwan. This is much stronger language than I am suggesting and the Chinese certainly have not terminated the normalization process because of it.

A second argument made in the Senate Foreign Relations Committee against my amendment was that it would commit the United States to take military action if the PRC used force against Taiwan. This criticism is unfounded. My amendment leaves completely open the options for a U.S. response. It neither pledges use of force nor rules out the possibility of use of force. I would oppose language that would commit us in advance to use force in the case of hostilities directed at the people on Taiwan. In fact, it is my view that it is unconstitutional to direct the President to use force under circumstances that may occur in the future.

We would not want to bind this Nation to action that goes even further than any mutual security treaty we have today.

None of these treaties, including the security treaty we are terminating with Taiwan, authorizes or requires the President to introduce Armed Forces into hostilities.

The mutual defense treaties that we have with Japan, South Korea, and the Philippines and the treaty that we are terminating with Taiwan all use the following language:

Each party recognizes that an armed attack on either of the parties would be dangerous to its own peace and security and declares that it would act to meet the common danger in accordance with its constitutional processes.

If my language were to use that exact language or go even further stating something to the effect that "an attack on Taiwan is considered an attack on the United States" or "the preservation of the integrity of Taiwan is vital to the national security of the United States," critics of my amendment might be on firmer ground. But my language states only that a nonpeaceful resolution of the Taiwan issue would threaten the "security interests" of the United States. This is a clear statement of fact and in no way commits in advance the United States to military action.

The United States reserves the right—even under its defense treaty obligations—to determine for itself what military action, if any, is appropriate. My amendment makes no inflexible commitment for the United States. But my language is a more realistic and a more accurate statement of U.S. interests in a peaceful resolution than a mere expression of "grave concern." And I believe that it implies more clearly that the United States does not reject the option of use of force. In other words, we are retaining the same option that the Chinese are retaining for themselves.

Still another argument against my amendment is that a PRC effort to resolve the Taiwan issue by other than peaceful means would not be a threat to U.S. security interests. I wholeheartedly disagree with this argument and my reading of American public opinion is that most Americans would disagree with it. Can you imagine the shock and the dismay in this country if the People's Republic of China were to resort to force to settle the Taiwan issue? The United States would be faced with decisions that—no matter how resolved—would affect U.S. security interests.

If Taiwan were forcibly overrun by the PRC, U.S. stature in the world would be seriously affected and the confidence of America's other allies in the region would be weakened. The people of Japan would be deeply shaken. The situation could bolster our adversaries in the region. For example, North Korea would undoubtedly be encouraged to take aggressive action against South Korea. Our security interests are clearly involved.

Certainly, I think there would be a shaking of confidence in NATO, in Israel, and with every other ally if we were unable to prevent an attack on Taiwan.

Why have I arrived at the conclusion that the words "of grave concern" do not convey to the PRC the seriousness with which the United States would view a

nonpeaceful settlement of the Taiwan issue? Let me share with you my research into some of the language we have used in the past to express our interest in situations where there really was no realistic option of possible use of force.

In 1956, after the Soviet Union had intervened with force in Hungary, a State Department spokesman said that "the actions of the Soviet Union are the cause of the greatest concern." But we did nothing. We took no action.

In 1975, Secretary Kissinger said that Soviet introduction of military equipment into Angola and Cuban participation in Angola are considered "a serious matter \* \* \* and not compatible with the spirit of relaxation of tensions."

In 1976, a State Department spokesman said the United States viewed "with gravity and concern" the North Korean slaying of two American military officers in the demilitarized zone.

Just last month, February 9, the State Department spokesman that the United States "would be seriously concerned" over a Chinese attack on Vietnam.

And just last week, the White House expressed "grave concern" over the Israeli cabinet's rejection of a U.S. invitation to a Camp David summit meeting.

In my view, expressions of gravity and concern are simply not strong enough. The term "of grave concern" is not strong enough. It does not serve in any way as a deterrent. Nor does it convey the strength of our true feelings. We need language that expresses our interests strongly and clearly while at the same time allowing the U.S. flexibility in the case of hostilities. I believe my language meets both requirements—and I urge my colleagues to adopt it.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, the language proposed by the Senator from Illinois was discussed thoroughly and at length in the committee. He presented his arguments there ably and well, just as he did now. But the concern of all of us was that this language could produce more problems than it would resolve.

The language proposed by Senator Percy should be rejected, as it was in the committee. The language of section 114(a) as it now stands reflects a careful balance, a balance between accurately reflecting what an armed attack against Taiwan would mean, on the one hand, and, on the other, avoiding legislating an approximation of the language of the Mutual Defense Treaty, which was terminated as part of the agreement on normalization of relations with the People's Republic. The current language is a product of the most careful discussions by our colleagues, and I think it states clearly and exactly what the circumstances require.

I think that all of us are well aware that the People's Republic does not have now and will not have in the foreseeable future the capability to launch a serious attack on Taiwan. To even begin serious preparations for such an attack would risk many of the other relationships—with Japan for example—that the Chinese have put such importance on.

Neither do they have the motivation for it, since it is the principle of "one China" and of the PRC being that China that is the most important to them. Furthermore, the Chinese are wholly aware of American feelings on the matter.

But to say that the United States is opposed to any settlement other than a peaceful one is quite a different matter than declaring that a settlement by force would be a threat to the security interests of the United States.

Here I should note that we have the use of code words "security interests." I think the threat to the security and the threat to the security interests brings to mind the wording of the previous treaty, that we thought that while on its face the language of Senator Percy's amendment could be acceptable, that when one takes into account the meaning of the words and what the words indicate, the perception of those words to the other nations in that part of the world, it could indicate a great deal more than the words on their face indicate.

So, all told, our committee was of the view that this amendment should be rejected, and this is the position the committee takes on the floor.

Let me note here that our military presence in Taiwan over the past two decades and our Mutual Defense Treaty were originally predicated on the understanding of that earlier period that our interests in Asia faced a monolithic Communist threat. We might not have been totally wrong then, but certainly now it is clear that the situation has changed radically in these decades from a primarily East-West confrontation to confrontations primarily among Communist states.

In reaching the agreement on normalization with Peking, the administration agreed to terminate the Mutual Defense Treaty with Taiwan, including the formal security commitment in article 5 of that treaty. The language introduced by Senator Percy could easily be interpreted as reviving the concept of that security commitment. As some of our colleagues pointed out in the committee's deliberations, we cannot have it both ways: We cannot at one and the same time establish relations with one Government of China and retain a security commitment to another part of China; we cannot, in other words, have a new Mutual Defense Treaty by another name.

Let us also take a different look for a moment at the wording of the Percy amendment compared to that reported out of committee. We of course do have political, economic and moral interests in a peaceful settlement of the Taiwan question. The leaders in Peking, as will their successors, have no doubts about these interests, and we will continue to assert them clearly. We would, in fact, be gravely concerned about an effort to resolve the Taiwan question by other than peaceful means. But this is not the same as stating by legislation that a nonpeaceful solution would be a threat to our security. Those words, as we all know, have a special meaning that goes beyond what is warranted by the facts.

And, as the administration has said, any attack on Taiwan would so fundamentally alter the basis on which the



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United States has normalized relations with Peking that obviously the administration would at that time consult with Congress and decide upon an appropriate response. But the degree of automaticity implied by the Percy amendment is highly undesirable.

At this point and at this time, however, I believe that we have struck the right balance in the language of section 114(a) as it now stands.

Let me add one point. What we want to achieve on this subject is a clear statement, demonstrating a virtual consensus, about the American people's concerns about our friends on Taiwan. We want Peking to get the message from Congress just as it already has been given the message by the President and Ambassador Woodcock. It is clear to me that Senator Percy's amendment would not get strong majority support. What would we have gained by language of this sort adopted by a narrow majority? The message that would come through in that case would be that a substantial minority does not care about a nonpeaceful resolution. We obviously do not want that. And it would be small comfort to Taiwan. I urge that we support the estimable language that was negotiated in the committee. It accurately and strongly reflects the American position on this subject—in a manner that is called for at this point in history.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I ask unanimous consent that the name of the distinguished Senator from California (Mr. HAYAKAWA) be added as a cosponsor of the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HAYAKAWA. Mr. President, inasmuch as I voted against the amendment in committee, I think I should explain why I have changed my position.

On first reading, it appeared to me that Senator Percy's amendment was unnecessary, because it seemed to me to be covered by other aspects of the same document. But on second and third reading, and upon more mature reflection, it seems to me that I must support Senator Percy's amendment, and therefore I rise to do so.

Mr. PERCY. I thank my distinguished colleague.

Mr. President, the senior Senator from Tennessee (Mr. BAKER), the minority leader, is necessarily absent from the Senate today on official business. Senator BAKER has authorized me, however, to make the following statement on his behalf.

Senator BAKER fully supports the Percy amendment to the Taiwan Enabling Act. When the committee voted on the security provision, he specifically asked that his proxy be withheld so that

he may preserve his option to support amendments to the provision.

Although he is unable to be here for the vote, Senator BAKER hopes to be paired in support of the amendment.

I express deep appreciation to Senator BAKER for his counsel and advice and his support. Senator BAKER and I have met at some considerable length with Deputy Secretary of State Warren Christopher, have listened to his reasoning, and both Senator BAKER and I have reaffirmed our intention to go forward, because we feel that this is a point of view that I feel is shared overwhelmingly by the American people and by the Senate of the United States.

I should like to ask a question of the distinguished chairman of the Foreign Relations Committee who was present at the time of our hearings when General Jones, the chairman of the Joint Chiefs of Staff, appeared before the committee. At that time I asked General Jones to indicate whether or not an attack by force on Taiwan by the People's Republic of China would be a threat to our security interests or just a matter of grave concern to us.

General Jones replied:

I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it.

Now the Senator from Illinois does not wish in any way by offering this amendment to imply that I believe the PRC would attack and try to take Taiwan by force, because I have listened very carefully to everything that responsible officials in the Government of the People's Republic of China have said about their intentions. It seems eminently clear that they are patient and they wish to resolve this matter in an amicable and peaceful manner. It is also the judgment of the Senator from Illinois that a nonpeaceful resolution to the Taiwan issue is not at all in the interests of China.

It would be so contrary to the thrust of their intent to develop their economy and establish goods relationships with the Western world and Japan. The Senator from Illinois cannot really envision the use of force by China today or in the foreseeable future.

I was also very pleased to find that our own Chairman of the Joint Chiefs of Staff, felt that as well.

If I could find in the—

Mr. CHURCH. May I reply to the Senator?

Mr. PERCY. I will be happy to have a reply while I try to find the response that General Jones gave to our questions on that particular point. But I would be very anxious to have a reaction from our distinguished chairman as to whether he does feel that an attack on Taiwan would be more than just a matter of grave concern. While the distinguished Senator was off the floor, the Senator from Illinois reviewed a series of statements made by members of the State Department and various administrations describing U.S. feelings about particular situations. In each case, no action of any kind was taken by the United States. If I could say, the se-

mantics of the situation are such that the signal is that a matter of grave concern does not imply that we take action; whereas, without any question, an attack upon a NATO ally, for instance, or an attack in other parts of the world where our vital interests would be threatened would certainly call for action. My amendment falls somewhere in between.

I ask my distinguished colleague if he would not agree with the Chairman of the Joint Chiefs of Staff and with the cosponsors of this amendment that a forceful attack on Taiwan would be a matter of more than grave concern, a phrase used frequently in diplomacy without action following it.

Mr. CHURCH. First, let me say that the language agreed to by the committee constitutes, in my view, a broader basis for reassurance to the people of Taiwan than the old arrangement between the United States and the Republic of China.

But as for the Senator's question, I call his attention to page 745 of the hearings where the Senator puts the following question to General Jones:

Senator PERCY. . . . Let me put it this way for you, then. In your judgment, is it stronger to say "a threat to the security interests of the United States" rather than saying it is a "matter of grave concern" to us?

General JONES. It may be stronger, but my problem with "threat to security interests" is that there is no qualifying factor there, and that our security interests are less there than in other areas of the Pacific or of the world. So, I would be concerned about the implication being far greater than intended.

So I think the record should be clear that General Jones did not call for the Percy amendment. In fact, at no time did he express any reservation about the language that is now contained in the bill.

Moreover, I believe that a careful reading of the general's testimony, as it appears here in the hearings, would convey to any Senator the fact that General Jones thought there were many other places in the Western Pacific that were of much greater importance than Taiwan to the security interests of the United States.

Now, having said that, Mr. President, let me go on to emphasize that the provisions of the bill in connection with our continuing concern for the security and well-being of the people on Taiwan go very far. If I were a citizen of Taiwan, I would be better satisfied with this congressional declaration of American policy than with the arrangement that previously existed.

I intend to speak to section 114 of the bill, but I would not want to do so while trespassing on the time of the Senator from Illinois, who presently has the floor.

I, for that reason, confine my response at this time to the answer to the question he put to me.

Mr. PERCY. Mr. President, I certainly hope that I did not imply that the Chairman of the Joint Chiefs of Staff, General Jones, supports my amendment.

The Senator from Illinois would never put the chairman of the Joint Chiefs of Staff in that position. At no time when I questioned him did I attempt to put him in the position of supporting a specific

piece of legislation. The administration, as the Senator from Illinois understood at that time, had not yet addressed itself specifically to this language, but it was wellknown that they wanted as little change as possible. The current situation is somewhat similar to the Panama Canal Treaty debate where the administration wanted as little change as possible, but the Senate of the United States found it essential in order to ratify that treaty that we have our mark or imprint on it. We had to satisfy many of the concerns that some of us had and we did change that language.

But it is understandable that the administration, after having negotiated an understanding with China, would not want to change it any more than was absolutely essential or necessary.

The Senator from Illinois knows that General Jones would have preferred that somehow I would qualify the amendment to show that our security interests in Taiwan are, for instance, less than our security interests in, let us say, Japan. But I do think that this kind of ranking does neither ourselves nor our friends any benefit whatsoever.

When Secretary of State Dean Acheson drew the defense perimeter in Asia to exclude South Korea we saw a war break out there.

So I would say that for us to issue such a ranking in legislation and say one interest is relatively more important than another would not really serve our interests.

We are simply trying to say that there are certain areas of the world where our interests are not really affected. There are other areas where they are affected and we should indicate as accurately as possible the degree of concern we might have in a particular area to deter actions harming our interests.

We are certainly today stating very clearly that our interests in the Middle East are far ahead of our interests in many other parts of the world. They are absolutely vital there. What the Soviet Union might do in some area affecting the Middle East would be highly important to us.

It is highly important that a Marxist state such as South Yemen not be permitted to increase its strength along the borders of Saudi Arabia. It is in the vital interests of the United States that we provide assistance, help, backup, and support for the position taken by Saudi Arabia now so that North Yemen not become a vulnerable spot and endanger Saudi Arabia whose interests are inextricably bound up in our own interests.

Therefore, when we come to Taiwan we simply say it would be a matter of much more than grave concern. It would be a matter involving our own security interests because of the close relationships we have with South Korea, and the close ties that we have in Japan, and the interest we have in keeping ourselves as a Pacific power, and insuring as much freedom in that area as is possible.

So the Senator from Illinois is once again gratified at the degree of support this amendment has in the cosponsors in the Senate, and that some members in the Committee on Foreign Relations,

who previously had voted against it or abstained from voting, have now, after reflection, supported it.

It would be my hope, of course, that taking fully into account the agreement and understanding reached by the chairman and the distinguished minority member of the Committee on Foreign Relations, with the administration, that they would find it acceptable and would not find it contrary to our normalization of relationships, and working together in a new spirit of friendship, accord, and partnership with China.

Mr. CHURCH. Mr. President, the amendment offered by the able Senator from Illinois should be rejected by the Senate, as it was rejected by the committee. The language of section 114(a) as it now stands reflects a careful balance. It is balanced between accurately reflecting what an armed attack against Taiwan would mean, on the one hand, and, on the other, avoiding an approximation of the language of the Mutual Defense Treaty—which was terminated as part of the agreement on normalization of relations with the People's Republic.

Mr. President, let me note here that our military presence in Taiwan over the past 2 decades, and our Mutual Defense Treaty, were originally predicated on the belief of that earlier period that our interests in Asia faced a monolithic Communist threat. We neither perceived nor understood the nature of communism as well then as we do today. In the intervening years, it certainly is clear that the situation in Asia has changed radically from what was a primarily east-west confrontation to a north-south confrontation involving the Communist governments, themselves.

If you look at China now, it is not a China poised on its coastline ready to leap across the Straits of Formosa for the purpose of subjugating the island and its people. Today's China looks to the north, expressing its daily concern over the threat posed by the other titan of the Communist world, the Soviet Union; and it looks to the south, where it has just been engaged in active warfare with another Communist neighbor, Vietnam.

Before we begin to tamper with the language in this bill, it would be prudent, first of all, to consider the nature of the present threat to the people of Taiwan.

The record is clear, made so by the many statements of the leaders of the People's Republic of China, that the Peking government presently entertains no intention of attacking Taiwan.

Furthermore, we have it from no less an authority than the Chairman of our own Joint Chiefs of Staff, that mainland China, even if it were to change its mind, presently lacks the military capability of successfully invading Taiwan.

Mr. PERCY. Mr. President, will the distinguished Senator yield at that point so that I can insert in the Record the quotations from General Jones that I have now found that would strengthen and support that argument?

Mr. CHURCH. I am only too happy to get whatever support is offered for any argument I make. If the Senator has pruned from the testimony of General

Jones that part which sustains my argument, I would be pleased to have that material inserted at this point in the Record.

Mr. PERCY. Mr. President, the only carefully selection would be simply to boil it down as much as possible. It does fully support the Senator's position, and confirms the fact that the distinguished chairman of the Foreign Relations Committee and the Senator from Illinois have no disagreement whatsoever about this particular point.

I have stated my own personal judgment that there is no intention on the part of China to attack Taiwan. General Jones has already affirmed that it is a problem not only of capability, but also intention, as to whether it would be in their best interests.

I quote from the top of page 741 in the hearings record, where General Jones says:

As we look at the People's Republic of China, we see increasing problems in their military capability. We have projected levels of capability and later found they haven't achieved that capability. We don't see an acceleration in the threat and we don't see any great urgency at this moment to make decisions on additional equipment (for Taiwan).

This is certainly reassuring. It should be reassuring to the people of Taiwan and it should be reassuring to all peace-loving people that there has been no buildup of capability.

If the People's Republic of China wished to, they could build up that capability. They have great human resources and great physical resources, and if they had wanted to, they could have developed that capacity. But they have not done so.

Further with respect to their intentions, General Jones said this. Quoting from the middle of page 751, I will read the entire quotation, so we can have in the Record once again what General Jones said about an attack on Taiwan.

He said:

I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it.

Then he continued, importantly:

I believe that it is unlikely—not to the point of a zero probability, but very, very unlikely—to occur. It would also not be in the best interests of the People's Republic of China. It would increase the risk of incursions by the Soviet Union from the north. It would weaken them in their relationships with Japan and the United States.

So I think it is clearly not in their best interest—and not in our best interest—that they do this.

It is General Jones' firm conviction, shared by so many of us, that it is not China's intention; they have not tried to develop the capability, and it is highly unlikely that they would do this, thus endangering, I might add, not just their relationships with the United States and Japan, but also with Western Europe.

It is those relationships on which China is now staking its future development. That is really central to their development. Taiwan is not central to that development. As they have indi-

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cated, they would have no objection to the institutions in Taiwan being carried on in the same way they are now, and they likened the situation there to that in Hong Kong.

So what my amendment does not arise from a concern about the intentions of the present leadership of China. I simply want to put into law an advance notice and an honest expression of opinion as to the degree of gravity with which the United States would look upon the use of force, unlikely as it might be.

I thank the distinguished Senator for yielding.

Mr. CHURCH. I thank the able Senator from Illinois for his contribution.

It appears, then, Mr. President, that we are agreed, first, that the Peking government has no present intention to resort to arms to settle the Taiwan question; and second, that even if this were not so, the mainland government does not possess the military capability, today, to successfully attack and conquer Taiwan.

Third, if the policy in Peking were to change, and an attempt were made to develop the capability necessary to successfully attack Taiwan, General Jones has told us that it would take the Chinese at least 5 years to develop the amphibious forces to carry an invading force across the 100 miles of water that separate the mainland from the island. So at the very least, we would have 5 years' notice before any attack could be launched. There does not seem to be any disagreement on that score, either.

Furthermore, Mr. President, General Jones has confirmed that the people on Taiwan have a sufficient quantity of defensive weapons today to successfully defend themselves against any attack. We have learned, I think, from the Israeli experience that there is no security guarantee that can be given by any foreign country—not even by the United States—that means as much to the successful defense of any land as the willingness and capability of its own people to defend it. Just as this is true with Israel, so it is true in the case of Taiwan.

Now, against these basic premises—first, that the mainland government has no intention of attacking Taiwan; second, that it lacks amphibious capability to invade Taiwan, and it would require at least 5 years to build the capability; and third, that Taiwan has the defensive arms to successfully turn back any attack—let us read the language that the committee agreed upon in section 114 of the bill. I read the language, Mr. President, simply to underscore how broad the committee's expression of interest is in the future of Taiwan, as set forth in the language of the bill.

Section 114(a) reads:

In order to achieve the objectives of this section—

It is the policy of the United States—  
(1) to maintain extensive, close, and friendly relations with the people on Taiwan;

(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effect to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

There, Mr. President, is the statement of American policy. It will be an expression of Congress. When signed by the President, it will be the law of the land.

What do we say about the action we will take to implement this policy, That is contained in part (b) of section 114, and reads as follows:

(1) the United States will maintain its capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan;

(2) the United States will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character;

(3) the President is directed to inform the Congress promptly of any threat to the security of Taiwan and any danger to the interests of the United States arising therefrom; and

And (4) the United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

I ask you, Mr. President, how could we design language better suited to accommodate the needs of the people on Taiwan as they look to the future?

(Mr. LEVIN assumed the chair.)

Mr. CHURCH. Mischief would be done by tampering with this language. The substitution of the words contained in the Percy amendment would bring us back very close to the phraseology that was used in the old mutual security pact which will be terminated as a result of the new relationship we have established with mainland China.

Yesterday, I spoke with the President of the United States. He is prepared to accept the committee language because it is drafted in such a way that it does not infringe upon any commitment he made on behalf of the United States. The language in the pending bill will not jeopardize the normalization of our relations with Peking, which the Senator from Illinois concedes he so strongly favors.

But if we adopt the language he would substitute, reminiscent as it is of the language contained in the old Mutual Security Treaty, then we place at hazard the new relationship we seek with mainland China.

The President was deeply concerned that we not make this mistake. He told me, as he has said to others, that he is obliged to comply with the understanding reached with the People's Republic of China. If this bill contains language that goes beyond that understanding, then he has only one honorable course to follow, and that is to veto the bill.

Why should we put this new relationship at such risk when it is utterly unnecessary?

Earlier in this debate, Mr. President, I said that if I were a citizen of Taiwan, I would prefer the statement of policy contained in this bill over whatever guar-

antees were proffered during the period of our alliance with Taiwan. I want to tell you why I say that, Mr. President. We have normalized relations with Peking because we believe it will benefit the United States. Normal relations with a government that maintains jurisdiction over one-fourth of the human race—normal relations with the great giant of Asia—makes sense. It not only opens up new opportunities for trade that will be beneficial to our farmers and to our businesses, but it strengthens the strategic hand of the United States in Asia.

For the past 30 years, we have dealt from a position of endemic weakness in Asia, which was one of the reasons for our involvement in two costly but indecisive Asian wars. With the normalization of relations with Peking we have the opportunity to convert that position of endemic weakness into a position of strategic strength, because as our relations with the Peking Government improve, the Soviet Union must take into account the new American position in Asia.

So we have good reasons to believe, Mr. President, that not only the economic but also the strategic and political interests of the United States will be substantially improved by normalizing relations with the Peking government.

By the same token, the Chinese have reason to believe that their interests will also be advanced. Why is Peking interested in normalizing relations with the United States? Why did that Government make concessions to us it had never previously made in normalizing its relations with other powers?

The reason is that China has great respect for American technology. China expects that we can contribute to her own efforts to modernize. China also realizes that there may be less danger of an attack from Russia as long as she maintains friendly ties with the United States. There are many, many different considerations which led the People's Republic of China to decide to normalize relations with the United States. And all of the expectations and benefits they expect to derive from this new relationship depend upon continued peace between the mainland and Taiwan.

Not only do we put Peking on notice from the very outset that American policy rests upon the expectation of continued peace, but we go on to say that we will furnish the people on Taiwan with sufficient arms for their defense in the future. In addition, we will view any use of force as a threat to the peace and security of the western Pacific area and of grave concern to the United States.

So, Mr. President, on all counts this language is perfectly adequate. It is broader than the rather narrow obligation assumed under the old security treaty. It is terribly important that the Senate uphold this language and not tamper with it. If we adopt the amendment offered by the Senator from Illinois, we will jeopardize a relationship that rests upon an agreement reached between the President of the United States and the Government in Peking.

Furthermore, if we adopt by a split vote the language offered by the Senator

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from Illinois, what have we accomplished? What kind of a message do we send? It is rather like the chairman of the board of trustees sending the hospitalized president of a corporation a get-well card, but by a vote of 6 to 5.

Is that the kind of message we want to send to Peking—that we have narrowly approved an amendment which substitutes "security interests" for "grave concern"—and that nearly half of the Senate opposed it? I do not think that furthers our interest or our purpose or, indeed, the objectives sought by the Senator from Illinois, himself.

How much better to accept satisfactory language that does the job for the people of Taiwan, and was unanimously adopted by the Foreign Relations Committee in its final vote. That is the way to send the message to Peking that we want sent; namely, that it is our expectation that there will be no resort to force in the future in the settlement of the Taiwan issue. For these reasons, Mr. President, I strongly urge the Senate to reject the Percy amendment.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. CHURCH. I am happy to yield to the able majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Committee on Foreign Relations gave extensive study to the question of Taiwan's future security. The bill that was originally submitted by the administration was amended by the Committee on Foreign Relations to include language that leaves no doubt about our continuing concern for the well-being of the people of Taiwan. As the distinguished able chairman of the Foreign Relations Committee has so succinctly pointed out, the amendment agreed to in the committee makes absolutely clear, as clear as the noonday sun in a cloudless sky, to the people of the Republic of China that its new relationship with the United States would be jeopardized seriously if there were to be force used against Taiwan. As the chairman has pointed out, any effort on the part of the People's Republic to do this not only would jeopardize its new relationship with the United States, but it would be an extremely costly and counterproductive venture.

Now, Mr. President, the United States will always act in its own interest. The language clearly states that such action on the part of the PRC would be of grave concern to the United States. The Senate does not have to write any new language in this by way of an amendment to protect the United States in its use of whatever force it may need to bring to bear at some future time when its own security interest is at stake. We do not have to write that into this. That goes without saying. The United States always has that option.

Mr. President, I yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I feel very heavy responsibility. I drafted the original Taiwan provision and fought for it in the committee. Then Senator CHURCH and I worked out this arrangement. The only possible change in it that could be made is the one that Senator PERCY suggests.

I believe that General Jones answered that completely and the reason that I accepted Senator CHURCH's modification—I used exactly the same words that are in this amendment originally. The reason that I accepted it was that I felt that Senator CHURCH was right, one, that we should not guarantee automaticity of response; and, two, that we should grade our national security interests based upon the facts of national security. He did not put in the first rank, like South Korea, the national security of the United States as it might be jeopardized by the use of force on Taiwan. But the provisions of the section as I drew it are very, very strong respecting the protection to the people on Taiwan. Just in 1 minute, they include conditioning our normalization on the nonuse of force; second, that if use of force were tried, a threat to the peace and security of the western Pacific area would be created. That is as much as a threat to the national security interests of the United States, quite apart from the words, "grave concern." Third, that when we are implementing this, we are going to retain our capacity to resist any display of force, and too, that it is going to apply very carefully spelled out, to the Taiwanese.

But it is very important to me, and this is what I got for it: one, we would not only resist any resort to force, and this is what I got, but other forms of coercion which would jeopardize the security, or the social, or economic system of the people on Taiwan.

Now, that is the guts of it. That is what we are trying to protect. It is not the security of the people on Taiwan alone, it is their right to continue the system of government which has made them the second most successful people in the whole of Asia.

Finally, we got another paragraph at the end of this section which said, "The United States will act to meet any danger." That ties into the way we have amended paragraph 3, which is the subject of what Senator PERCY wants to change. "The United States will act to meet any danger" described in that paragraph now sought to be changed, "in accordance with constitutional processes and procedures established by law," which is exactly the way we approach NATO.

Taking the whole section together, I felt it was stronger, more effective, more particularized and even better notice to the People's Republic of China than the way I had originally drafted it; but when I did, it did contain exactly the same approach which is now sought to be reintroduced. We have added those things which make it, in my judgment, even more effective.

For those reasons, I am compelled to oppose the Percy amendment. I thank the majority leader for yielding.

Mr. ROBERT C. BYRD. Mr. President, I move to lay the amendment on the table.

Mr. HELMS. Will the Senator hold that for a few minutes?

Mr. ROBERT C. BYRD. I cannot, for reasons which I shall be glad to explain. I shall withhold it for 1 minute to the Senator.

Mr. HELMS. That will not be long enough. What was the agreement made? Mr. ROBERT C. BYRD. There is no agreement.

Mr. HELMS. Is the Senator going to move ahead and move to table when other Senators wish to speak?

Mr. ROBERT C. BYRD. There was a long time in here that I was asking Senators to please, please speak.

Mr. HELMS. This Senator has been sitting here a long time, but if the majority leader has made that judgment, fine.

Mr. ROBERT C. BYRD. Mr. President, I move to lay the amendment on the table and I ask for the yeas and nays.

I thank the Senator from North Carolina for his usual courtesy and understanding.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUE), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from North Carolina (Mr. MORGAN), and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "nay."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

Mr. ROBERT C. BYRD. Mr. President, I ask for regular order.

The VICE PRESIDENT. Is there a Senator in the Chamber who has not voted?

Regular order is called for.

The result was announced—yeas 45, nays 49, as follows:

[Rollcall Vote No. 12 Leg.]

## YEAS—45

Baucus	Glenn	Nelson
Bayh	Gravel	Nunn
Bentsen	Hart	Pell
Biden	Heflin	Randolph
Bradley	Jackson	Ribicoff
Bumpers	Javits	Riegle
Burdick	Johnston	Sarbanes
Byrd, Robert C.	Kennedy	Sasser
Chiles	Leahy	Stennis
Church	Levin	Stevenson
Cranston	Magnuson	Stewart
Culver	McGovern	Talmadge
Durkin	Melcher	Tsongas
Eagleton	Metzenbaum	Williams
Exon	Muskie	Zorinsky

## NAYS—49

Armstrong	Goldwater	Pressler
Bellmon	Hatch	Proxmire
Boren	Hatfield	Pryor
Boschwitz	Hayakawa	Roth
Byrd,	Heinz	Schmitt
Harry F., Jr.	Helms	Schweiker
Cannon	Hollings	Simpson
Chafee	Huddleston	Stafford
Cochran	Humphrey	Stevens
Cohen	Jepsen	Stone
Danforth	Kassebaum	Thurmond
DeConcini	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	Mathias	Warner
Durenberger	McClure	Welcker
Ford	Packwood	Young
Garn	Percy	

## NOT VOTING—6

Baker	Long	Morgan
Inouye	Matsunaga	Moynihan



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So the motion to lay on the table amendment No. 79 was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was rejected, and I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD addressed the Chair.

The VICE PRESIDENT. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I hope that the Senate will reconsider the vote that has just been taken.

Mr. HART. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. The Senate will be in order.

Mr. CHURCH. Mr. President, the President of the United States is now in the Middle East, in an effort to win peace. I think that a vote of this kind, occurring while he is in Cairo, would send a very unfortunate message.

Just before he left yesterday, the President told me of his anxiety about Senate approval of this amendment. He said he hoped very much that the Senate would not insist upon going beyond the understanding that he had reached with the People's Republic of China, on the basis of which it became possible for both countries to normalize their relations.

I know of the concern of the People's Republic of China about substituting the words "security interests of the United States" for "grave concern." The Ambassador from Peking has raised this matter, asking me many probing questions about our motives and purposes in connection with the committee's language.

If it is the objective of the Senate to place in jeopardy the normalization of our relations with mainland China, then let it be clear to everyone that this is what we are doing with the vote just cast.

I ask the Senate, Why? The substitution of these words does not improve by one iota the measure of assurance we give to the people on Taiwan respecting their future.

This is a mischievous amendment because it insists on the use of two words borrowed from our Mutual Security Treaty with Taiwan. It thus raises the whole question of whether we will keep faith with our commitment to Peking, which forms the basis for our new relationship with Peking.

We are interfering here with what is regarded as an internal matter by the Chinese, not alone by Peking but by Taipei as well. Their proposition is that there is but one China and Taiwan is part of that China. It is a proposition subscribed to not only by Peking but by Taipei.

Now when we insert "security interests of the United States" we draw the American defense perimeter line between Taiwan and the mainland.

And I ask Senators why do it? I ask Senators what greater assurance can be given to the people on Taiwan than that

which is already contained in the language of the bill?

Mr. President, before we decide upon the Percy amendment we should have a clear understanding as to the nature of the threat to which it is directed.

Earlier in the debate, the Senator from Illinois and I agreed, based on the record that was made in the hearings before the Foreign Relations Committee. We agreed, first, that presently there is no intention in Peking to attack Taiwan; second, that Peking lacks the military capability of conducting a successful attack upon Taiwan; third, that if the policy in Peking were to change it would require at least 5 years for them to obtain the amphibious fleet necessary to launch a successful attack upon Taiwan; and fourth, that Taiwan today possesses the necessary defensive weapons to turn back any attack that might be directed upon them.

Based upon those premises, what has the committee done to give assurances to the people of Taiwan as they look to the future?

If Senators will examine section 114(a) beginning on line 25 of page 13 of the bill, they will see that it is the policy of the United States, which as a part of this legislation once signed by the President, becomes the law of the land:

(1) to maintain extensive, close, and friendly relations with the people of Taiwan;

(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

Now, Mr. President, these expressions of concern for the people on Taiwan are broader than any ever contained in the old mutual security treaty. Read the language of that treaty and you will see that it was confined to one thing, an attack, in which event it promised mutual consultation in accordance with the constitutional processes of both countries.

But this declaration promises close, extensive and friendly relations with the people on Taiwan. This declaration makes it clear that everything the Chinese expect to get from their new relationship with our country is based upon our expectation that there will be continuing peace between the mainland and the island.

Do Senators want to send a message to Peking? What kind of a message do we send to Peking on the basis of this last vote? We are telling Peking that, a margin of four votes, the Senate of the United States has decided that any future attack on Taiwan would be an attack upon the security interests of the United States. That is like the board of trustees sending a get-well message to the corporate president saying that, "We want you to get well by a vote of 5 to 4." By four votes, the Senate practically split in twain. How can we send a clear signal that way? It is not one of unity but one of division, not the kind of unan-

imous vote we had in the committee when we finally adopted the words now contained in the bill.

This is a pointless and self-defeating amendment to adopt. It does not advance the interests of the United States. It could put our new policy in jeopardy, and it does nothing for the people on Taiwan that is not equally well accomplished by the language already contained in the bill.

(Mr. STEWART assumed the chair.)

Mr. CHURCH. Oh, it is political, I understand that. But I think we should be concerned here with the fundamental interests of our country. For 30 years we have been pretending that the Government of China was located in Taipei; for 30 years we have imposed upon ourselves a position of endemic weakness, because we failed to acknowledge the presence of the giant of Asia.

That old policy engulfed us in two indecisive wars in Asia for which we paid very dearly. But, oh, we love our illusions, Mr. President, so much so that we were the last of the major nations finally to acknowledge the truth, that the Government of China resides in Peking, and that it is in our national interest, as other countries have found it to be in theirs, to have normal dealings with that Government.

Why put all of that in jeopardy because of political considerations, partisan considerations? I do know that the words we have added could do mischief. I do know they could put our new policy in jeopardy, and I do know that they do not add one iota to the assurances we give the people of Taiwan in the language of the bill.

So I plead with the Senate to reconsider this vote, and I do so in the name of a rational policy. We have been so long in need of one in Asia.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Ohio.

Mr. GLENN. I thank the Chair.

Since coming to the Senate I have expressed my convictions and concerns about Taiwan's security on many occasions and, as various officials can testify, to two administrations. Thus I do not oppose the Senator from Illinois' amendment because I am any less concerned about Taiwan than is he, or less concerned about the perception of a U.S. presence in East Asia, because I share fully his concern on these points.

The reason why I oppose this amendment is because I feel there is a right way and a wrong way to send this message to all parties to this new normalization process, and to insure security. I think we will have chosen the wrong way if we adopt this amendment.

This amendment does nothing to materially affect Taiwan's security. It provides no weapons. Yet it creates a serious risk of the United States being pulled into a war not of our choosing. That is the important point about this language. It creates a serious risk of being pulled into a conflict not of our choosing.

Should an incident like a raid from Taiwan or an overflight, whether inadvertent or not, of PRC air space trigger a PRC reaction, we do not have American members of the Taiwan Defense

Command present on Taiwan. We will not have a U.S. representation when shooting starts in the Straits of Taiwan. Without the presence of an American military presence in the Taiwan Defense Command, now abolished, how do we determine the facts? Do we take someone's word for it that they have been attacked? "We just had a ship sinking in the Taiwan Straits, America, come to our help. We cannot manage this. It was by a submarine, and we have no antisubmarine warfare capability. We have no method of attacking submarines."

Do we take their word for it and immediately go out to the Taiwan Straits with a U.S. carrier and start a war?

We would be hard pressed, if this amendment is approved, to go against that request from Taiwan because what we are saying is that our front line of defense is the Taiwan Strait. I do not want to see us make a decision here today that would give that judgmental factor of whether to go to war to someone else.

What if we had a couple of aircraft shot down, inadvertently or not, and maybe they are shot down by weapons that are incapable of being opposed by the weaponry that the Republic of China, previously named, has on Taiwan? They call for our air assets to come out there and help counter that threat. Would we go automatically? Are not we stating that this is the security line that we are drawing for the United States of America? Yet, that "line of containment" is not under our control?

I find it very hard to believe that we would want to do that. Yet the language that is proposed in this U.S. Senate today could be used as justification for just such a call. We would then stand before the world as going back on yet another agreement, of not living up to our commitments around the world. Such a serious situation could arise because we made a judgment now that we did not want to know what was going on, we did not want to evaluate how serious it was, we did not want to know what weapons were used, we did not want to know why the attack occurred and whether it was instigated by Taiwan, perhaps to get us involved.

We would be, in effect, ruled out from making those most important life-and-death decisions if this security language is adopted.

I do not think we want to see those decisions go into other than American hands. I do not think we want to see that at all.

We do have a moral commitment to the people of Taiwan, but it is not included in the legislation, and it does not include, to my way of thinking, a required knee-jerk American response.

Much has been made of the fact that Taiwan is strategically significant to the United States.

Mr. PERCY. Mr. President, will the Senator yield for a question?

Mr. GLENN. Not until I finish my statement. Then I would be glad to answer any questions.

As to the situation with Taiwan's strategic location, that was addressed

in the committee. General Jones, Chairman of the Joint Chiefs of Staff, told the committee that from a broad strategic interest Taiwan is less significant than South Korea, Thailand, and Japan, saying, "I would place it in a position of far less strategic interest than other nations in the Pacific." That is the Chairman of our Joint Chiefs of Staff speaking of Taiwan's strategic significance.

Yet we are told by this language that we now say that our front line runs down somewhere through the Straits of Taiwan.

Admiral Snyder, former Chief of Taiwan Defense Command, now defunct, and the most forceful witness for Taiwan's strategic importance, nevertheless concluded his answer to Senator PERCY with the observation that although Taiwan is important—

I think that as long as we can keep Clark Air Force Base in the Philippines we can get along without it.

#### Meaning Taiwan—

Thus, with the recently concluded amendment to the Philippines base agreement, we retain a power projection capability from the Philippines, Japan, and our at-sea forces sufficient to exert a U.S. presence in the Western Pacific.

So from a strategic standpoint solely Taiwan is neither a vital interest nor necessary to the effective employment of U.S. military forces in the region.

amendment denies the United States the flexibility needed to cope with an uncertain future. When Senator PERCY asked the Chairman of the Joint Chiefs of Staff about the essence of this amendment, General Jones noted that although the language may be stronger:

My problem with threat to security interests is that there is no qualifying factor there and that our security interests are less than in other areas of the Pacific or the world. So I would be concerned about the implication being far greater than what is intended.

That is a direct quote.

Any U.S. commitment must be credible and capable of being supported by the U.S. public; otherwise, the U.S. position is further eroded.

Yet, the Lou Harris and Roper polls show that despite a slight increase in favoring the use of U.S. troops to defend Europe, Korea, and Yugoslavia since 1974, public willingness to defend Taiwan has slipped.

More importantly, as I argued in a letter I sent to Secretary Vance a short time ago, providing sufficient arms to Taiwan, thereby deterring PRC action, is to be desired, rather than overblown rhetoric from the United States which may require U.S. forces engaging in combat if we are to honor our commitment.

The last paragraph of that letter I sent to Secretary Vance makes this point:

Like many Americans, I want better relations with the PRC, but still have concerns about the security of Taiwan. I believe Taiwan's own military capabilities, aided by the qualitative improvements I have sought—is the best security guarantee for both Taiwan and the United States, and will provide the least likelihood of automatic American

involvement in situations not of our making nor under our direct control.

I would add here that I have suggested that we get going at the earliest possible time with the weapons that Taiwan needs.

Mr. President, the United States will make very serious judgments before we decide to go to war. They will be based on the situation existing at that time. The language of grave concern for that situation that will exist at that time is the language that was carefully worked out in committee. That language does not mislead anyone.

Mr. President, I would submit that the language that has been suggested in this amendment will, however, lead to much misunderstanding. Why do we want to lead Taiwan into thinking we will make a commitment to them that we are not likely to honor in the crunch? Why do we want to mislead our friends around the world into thinking we would make that kind of commitment? Why do we want to mislead the people in the People's Republic of China into thinking that we would have a kneejerk reaction to events beyond our control, or our defense command that we would have that kind of reaction?

Such a kneejerk reaction would be expected when it will not occur; and the world should understand we will not be making that kind of commitment.

We need to send abroad a message of our grave concern as it was expressed in the bill brought out by the committee, Mr. President; and I urge my colleagues not to seek to make a commitment which will leave others to control whether we go to war, or indicating to the people of Taiwan and the PRC, or other friends around the world, that we have a commitment that we would honor regardless of the circumstances that may occur in the future.

Mr. PERCY. Mr. President, I ask unanimous consent that the name of the distinguished Senator from North Carolina (Mr. HELMS) be added as a cosponsor of the pending amendment.

The PRESIDING OFFICER (Mr. STEWART). Without objection, it is so ordered.

Mr. PERCY. Mr. President, it is my intention, at an appropriate time, after all Senators have spoken who wish to speak on this issue, to move to lay on the table the motion to reconsider.

I think that a discussion of this issue is important. I would like to express appreciation to Senator HELMS for his cosponsorship, because I know that Senator HELMS, if I understand his feelings correctly, feels that the so-called Percy amendment is the minimum that he can accept.

I have thought very carefully how far we could go to honestly express our point of view, just as honestly as China has expressed its point of view. The officials of the People's Republic of China have been very forthright in expressing their opinion. They absolutely refused to enter into any pledge of nonuse of force, but they did provide some degree of reassurance.

Though, as I have indicated, I cannot

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go beyond the language of the so-called Percy amendment, I deeply appreciate the fact that there is wide support despite varying gradations of support. Senator HELMS' support for this amendment is meaningful because it is my understanding that his own amendment goes substantially further, and that if the Percy amendment fails, he might well carry forward with that amendment and press that issue.

The question also involves how we feel about normalization, and we have differing views on that. I have made it very clear that I strongly favor normalization of relationships, providing that every possible degree of assurance is given to the people of Taiwan, and providing also that we state unequivocally what our own national interest is. Just as we expect China to forthrightly, honestly, openly, and clearly express their national interest, we also have that right, that duty, and that obligation.

I am certain also that the People's Republic of China, particularly after Vice-Premier Teng's visit here and his personal discussions with the Members of the Senate, know how strongly the American people and the Members of the Senate feel on this issue. And though the executive branch of the Government did not want any changes whatsoever, Senator CHURCH and Senator JAVRS were able to convince the executive branch that it was essential and they put together language that more clearly expressed our point of view.

As we all recall during the Panama debate, many of us indicated there was no way we could ratify that treaty without amending the language to take into account certain contingencies. The leadership of the Senate, Senators BYRD and BAKER, the majority and minority leaders, helped work out language that made it possible for many of us to vote for that treaty, though even then many in good conscience could not.

I feel that it is necessary, just as the distinguished chairman and the ranking minority member of the Foreign Relations Committee felt it necessary, to adopt language that more clearly expresses our views. I think it is necessary now for the Senate to modify the language adopted by the committee, and the modifications we have suggested are, in the judgment of many, very mild indeed.

The implication has been made that the amendment before us would require the United States of America to act, or react, in case force was used. In reading the amendment, there is nothing that requires the United States to act. The amendment leaves open the option of action. It leaves it open completely. The amendment does not authorize the President to take any action in the case of hostilities. It is very clear that we simply are sending a message, a more honest and meaningful message than in the language in the legislation before us.

I cannot perceive how this amendment undermines anything. That word "undermine" has been used occasionally.

The Senator from Illinois cannot see that it will jeopardize anything. It jeopardizes nothing. We have a responsibility

to be clear in our statements. We have a responsibility to be honest with China. We have honest differences of opinion which we should express just as honestly as the Chinese express their opinions.

They do not ever hesitate to lay it right on the line.

The Vice Premier laid it right on the line to us here and we respected him more for speaking forthrightly to us and letting us know how he stood on certain issues.

When he went to Tokyo he let us know through his conversations over there exactly how he felt about the way the United States had handled the Iranian situation.

He let us know unmistakably what he intended to do in Vietnam. And though we expressed our grave concern or our deep concern, or however it was we wrung our hands about that, he said right here he intended to punish Vietnam. He moved forthrightly to fulfill that pledge, and he did so, and he did it in a way that was rather impressive to the Vietnamese forces. The Chinese forces were very impressive in the way they administered that punishment.

He was honest about what he intended to do. Certainly, I think we have that same responsibility.

I respectfully suggest to the Senator from Idaho that it is in the U.S. national interest to state our security interests and not to mislead the Chinese. It would be wrong, in my judgment, not to tell the truth and adequately express how strongly we feel.

The distinguished Senator from Ohio has said that in his judgment the use of the term "gravely concerned" adequately expresses how we feel, and adequately expresses what we might do.

I would just like to go back into history a little bit and read to the distinguished Senator from Ohio what we have said as a country in the past.

In 1956, after the Soviet Union intervened with force in Hungary, a State Department spokesman said: "The actions of the Soviet Union are the cause of the greatest concern."

Did that in any way inhibit or even impress the Soviet Union? Not one bit. They held their ground.

In 1975, Secretary Kissinger said the Soviet introduction of military equipment into Angola and Cuban participation in Angola are considered "a serious matter not compatible with the spirit of relaxation of tension." That was almost reassuring to our adversaries that the United States had rejected the possibility of action.

It is a serious matter. We have said that before. That may be a signal that we intend to wring our hands. We look on it with grave concern, but we do not really intend to do anything because they are not our security interests. Should anyone doubt that this Nation will consider action if its security interests are threatened? Is there any doubt that we should move in Europe at any time the interests of the United States there are endangered?

Mr. BIDEN. Will the Senator yield for a question on that point?

Mr. PERCY. I am happy to yield.

Mr. BIDEN. Is the Senator equating our national interest in Taiwan as equal to that in Western Europe? Is the Senator suggesting they are the same?

Mr. PERCY. The Senator from Illinois is suggesting that the interests the United States has in a peaceful resolution to the Taiwan issue, in a nation with which we have had a mutual security pact for 30 years, are greater than the interests we may have in some other more remote part of the world where we have not had that kind of close relationship.

No, the Senator from Illinois, on a matter of priorities, would certainly put Europe ahead of Taiwan. He would put the Mideast ahead of Taiwan. And probably Japan and South Korea ahead of Taiwan.

Mr. BIDEN. I would hope the Senator would do that.

Mr. PERCY. But the Senator from Illinois would feel that if there was a use of force—I have said many times on this floor that I do not anticipate at all the use of force—if there were a use of force, I would personally feel that something more than just an expression of grave concern and a verbal slap on the wrist would be required. This Nation should consider acting under those conditions. It would only be fair to notify the People's Republic of China ahead of time that we put a peaceful settlement of the Taiwan issue as a high priority.

The Senator from Illinois put the question to the Chairman of the Joint Chiefs of Staff as to how he would look upon this matter. As I quoted earlier, General Jones replied, "I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it." Would my distinguished colleague feel that there should be any question about it as to whether or not an attack by force on Taiwan would be contrary to the security interests of the United States of America?

Mr. BIDEN. Did not General Jones also say that the impact of such an attack would not be significant to American security? That its impact would be minimal? I do not have the language in front of me, but my recollection is that General Jones' comments were along those lines.

Is it not also true that the language of S. 245 as it now exists does not preclude us from using force? We retain the option to determine how and when we would use force. Maybe I can repeat myself to the Senator. He seems to have been occupied.

Does the language of S. 245 as it now stands preclude the United States from using force? Do not we retain the option to use force, depending on the situation? I assume the Senator would not suggest that should the 12 million indigenous population of Taiwan rise up against the 1 billion Chinese who run the mainland that we would send the U.S. fleet steaming in to take over. Or do my friends from Illinois and Ohio suggest that under those conditions we do move in?

There are all kinds of circumstances under which we should have a variety of reaction options.

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I was just handed General Jones testimony. He said:

It may be stronger but my problem with the threat to the security interests is that there is no qualifying factor there and that our security interests are less there than they are in other areas of the Pacific or other areas of the world. So I would be concerned about the implication being far greater than that intended.

I cite that to set the record straight.

I am infringing on the Senator's time. I have a good deal more to say about this if the managers of the bill will give me the opportunity, or when I am able to get the floor in my own right. I think the question here is whether or not we will face the political realities or continue to debate the China question. I remind my friend from Illinois that when we were in grade school we debated about "Who lost China." I suggest today we never had China to lose it, and I suggest now we are about to begin a new debate. With these amendments such as Senator PERCY's, I suggest that the debate over China will begin anew. If the Senator succeeds with his amendment, we will be debating again "Who lost China." The Senator's amendment suggests that the United States, in effect, institute a two-China policy. That would be a sham. Those are not the terms we agreed to in the normalization procedure. That is what the issue is about today.

Mr. President, I support S. 245, because it enables the United States to establish a creative new relationship with the people of Taiwan that assures that island's continued security and economic well-being without compromising our diplomatic commitment to Peking.

How to achieve these twin goals has been at the heart of the issue of our China policy since 1972. How to be fair, how to shortchange neither mainland China nor Taiwan, is the problem the Senate Foreign Relations Committee has just confronted, I think successfully. It is the crux of what has troubled the American people about the recent change in the direction of our China policy.

There is a large body of opinion—both in the Nation and in this Chamber—that is skeptical about the good intentions of the Communist Government of China. Chinese leaders came to this country and denounced the Soviet Union, trying to persuade us that "the enemy of my enemy is my friend." Days after they returned to Peking, Chinese forces invaded Vietnam.

Now, I do not approve of a leader of a country coming to our shores and denouncing a leader of a third country. Nor do I approve of military invasions. And I reserve the right to share my colleagues' skepticism about the motives and intentions of the People's Republic of China. But I maintain that recognition of the Peking government—the government of nearly 1 billion people—a government that has been in power for nearly 30 years—in no way implies approval of that government's every policy or of that government's social or economic system. What we are doing is simply recognizing that the government of Peking is the legitimate and legal gov-

ernment of one-quarter of the world's population.

What derecognition of the Government of Taiwan implies is not abandonment of an ally and friend. Neither my colleagues in the Senate nor the American people should in any way infer that the American Government is no longer concerned with the peace and prosperity of that island's 15 million inhabitants. What the new relationship with the people of Taiwan signifies is that U.S. policy has finally come out from under the fig-leaf of political pretense. The recognition of Peking and the derecognition of Taipei brings our policy into the clear light of present-day reality.

To put this diplomatic event into the proper context, I think we should look back. We could look back to the Shanghai communique of 1972. But for a moment I want to look still further back—into what is for me history.

Let us go back to 1949. After the Chinese civil war in which the Communists defeated the Nationalist forces of Chiang Kai-shek, the losers took refuge on the island of Taiwan, then called Formosa. This handful of Chinese Nationalists sheltering themselves on Formosa, still maintained that their government was the legitimate government of the Chinese people. And the United States joined them in that fiction.

Because of the geopolitics of the early fifties, the United States, understandably, did not change this fiction. There was the Korean war. There was also the overpowering threat to U.S. interests posed by the Moscow-Peking alliance.

During this decade of the fifties, there were many Americans who claimed that it was the U.S. policy of the 1940's that "lost China" for us. The debate over who lost China raged for a decade. I, personally, do not believe that China was ever ours to lose. In my opinion, the real loss of China for the United States was the loss of contact with the mainland. The real loss of China for America was the loss of influence with the Peking government.

Now, I will be the first to admit that it is easier to understand that loss today than it was 30 years ago. I refer to this history only because I believe that, after 30 years of deliberate fiction, it is time to set our relationships with China and Taiwan straight. In fact, not fiction.

We created that fiction of Taiwan. And we are willing to take the responsibility for it today. We will not abandon her. We recognize the fact of her economic prosperity and we will do everything we can to protect it. We recognize the danger to her security and we will do everything we can to protect it. But we can no longer perpetuate the fiction of Taiwan's political pretensions.

The first step toward a realistic U.S. policy on China was taken by President Nixon in 1972. The Shanghai communique issued at that time stated that there is but one China. The communique never stated which was the legitimate one. But it recognized the political reality of one China.

The brilliance of the Shanghai communique was less in its clarity than in its precise area of vagueness. Its bril-

liance lay in what it did not define. It contained what lawyers sometimes call "creative ambiguity."

While the credit for the initiative in a realistic China policy goes to a Republican administration, there is little doubt of the courage of President Carter in concluding that process of political reality.

It is to the Senate Foreign Relations Committee, however, that the final task was given. Because it is this committee, under its new leadership, that was able to flesh out, to specify and to amend the administration proposal. In a way that gives Taiwan a fair shake.

And it is this same committee that has had the foresight to recognize that giving Taiwan a fair shake does not mean that we create another two-China political faction to replace the old one. The committee was able to draft and pass legislation that is before us today that meets the objectives of U.S. policy. Let me say it more plainly—S. 245 serves the interests of both the United States and Taiwan.

Mr. President, in the long run, the interests of both countries are best served by good relations between the United States and China. And the passage of amendments to this bill which would, in effect, create a second China would lay the basis for another 30 years of fiction, of illusion and of instability.

Therefore, Mr. President, I urge my colleagues—not to "lose China" a second time.

Mr. PERCY will the Senator yield for a question?

Mr. BIDEN. Yes. The Senator has the floor.

Mr. PERCY. The Senator from Illinois appreciates the questions and the comments which were made, but I would like to point out as I have before that my amendment does not require the United States in any manner, shape, or form to use force. It simply leaves open certain options. With this amendment, we are retaining the same options the Chinese have retained. We do not preclude options, but we give a clearer signal than does "grave concern" that we intend to do something other than wring our hands.

I know that the majority leader would like to make a motion, but the Senator from Illinois has promised the senior Senator from California the right to speak at this time. If the motion will preclude the right of Senators from commenting at this time, would the Senator withhold his motion?

Mr. ROBERT C. BYRD. Mr. President, my motion would not preclude Senators from speaking on the amendment. It would not.

I ask unanimous consent that I may be permitted to withdraw the motion to reconsider.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The motion to reconsider was withdrawn.

Mr. PERCY. I thank the distinguished majority leader.

Mr. HOLLINGS and Mr. HAYAKAWA addressed the Chair.



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Mr. PERCY. The Senator from Illinois has not yielded the floor.

Mr. HOLLINGS. I yield to the Senator from California and I shall speak later. I thought since the motion was withdrawn, we could move on to something else. I was going to call up an amendment. I yield the floor and shall wait until after the Senator from California has completed.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from California will yield, I say to the Senator from Illinois that I thank him for yielding. Perhaps we could reach an up-or-down vote on his amendment quickly after the Senator from California has yielded the floor.

Mr. HAYAKAWA. Mr. President, the distinguished Senator from Idaho has said that the amendment offered by the Senator from Illinois undermines the commitment to the basis on which our relations with the people of Peking have been established. Perhaps it is an act of temerity on my part, but I should like to remind the distinguished Senator from Idaho that the President may be committed to the basis on which our relations with Peking have been established, but we in the Senate were not consulted as to that basis on which those relations were established. As everyone here will recall, those relations were established in our absence and without consultation and on a date in which consultation was impossible. Hence, I cannot see how we are similarly committed.

This is the reason that many of us in this Chamber are adding amendment after amendment to the language of the Taiwan Enabling Act. This is only one of the amendments.

Mr. President, I have heard a lot of talk about how the United States can maintain a dual relationship with the two parts of China, and an analogy with Japan's success in maintaining such a dual relationship. If Japan can maintain nongovernmental relations with Taiwan at the same time as it maintains full diplomatic relations with the mainland, why cannot we do the same? That is the argument we frequently heard. What those who argue this position ignore is that Japan felt secure about this dual relationship, because the United States had a defense treaty with Taiwan. That protection to the peace of the Pacific and, therefore, that protection which Japan's trade with both parts of China enjoyed no longer exists at this moment. In short, Japan can no longer feel as secure as she did and what Japan will do about that fact, I do not know.

I do know that the peace of the Pacific and the whole area is no longer as secure as it was when we had a defense treaty with Taiwan. I do not expect or hope ever to restore that defense treaty with Taiwan under present conditions. But the Senator from California does welcome the wording of the amendment of the distinguished Senator from Illinois, since it spells out specifically the dangers involved in this new relationship that, at the same time, treats the two Chinas as one and also treats the two Chinas as

two. There are so many ambiguities in this proposed relationship that the Senator from California, for one, fully intends to vote for the amendment offered by his distinguished colleague from Illinois (Mr. PERCY). In one respect, at least, those ambiguities will be reduced if we accept Senator Percy's excellent suggestion.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I am ready to vote. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. PERCY. Mr. President, there are others who wish to speak.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

Mr. President, I have listened with great interest to the comment by the distinguished chairman of the Committee on Foreign Relations and others. I notice that the distinguished chairman began his argument with the suggestion that the President would be embarrassed in his Middle Eastern trip if the Senate were to take the action of approving the amendment of the Senator from Illinois. I happened to think of a note that was left for me earlier this morning by a friend from North Carolina, who stopped by. I thought something of this sort might come up on the floor, and I had a young lady type it out. Let me read it.

He said:

One final note. I feel that the administration will try to play on the Carter trip to the Middle East in its attempt to kill the Percy amendment. They will say, "Don't embarrass the President with this slap in the face just when he is trying to negotiate a delicate treaty, et cetera." They will claim that such a move shows the parties to the Middle East treaty that the Senate and the Congress cannot be relied on to uphold the President's actions.

Well, this friend of mine was certainly prescient. He must have had a crystal ball in his pocket.

He went on to say, with respect to his earlier comment:

This is nonsense. Why? Because there was prior consultation with the Senate prior to the President's trip—the briefing of the committee, the Begin visit, et cetera. There was none of that with Taiwan.

Mr. President, that is it in a nutshell. The President of the United States has sent the Senate a scrambled egg and has said, "Now unscramble it." If he had conferred with the Congress, or even with the Foreign Relations Committee, the Senator from North Carolina does not believe that we would be in this fix this afternoon. Certainly, I take no pleasure in resisting the legislation pending before us, but I feel in good conscience that we must do something to strengthen the defense section. As my friend from Illinois has indicated, this is the minimum insofar as the Senator from North Carolina is concerned. I am happy to cosponsor his amendment. I

think, as he has indicated, that we should go farther, but I am willing to compromise on this.

In the comments by the distinguished chairman of the Committee on Foreign Relations earlier, he said, "What will we be telling Peking?" What will we be telling Peking by approval of what the distinguished chairman called a frivolous amendment by the distinguished Senator from Illinois?

I think the more important question is, what will we be telling such friends as we have left around the world if we do not do this? I might raise another question, what was the President telling the Congress when he declined to confer with Congress when he made the judgment to dump Taiwan and embrace Red China? There are all sorts of questions that we can raise and which we should raise. I, for one, do not feel that we should indulge in obfuscation. We ought to lay it all out to be seen.

The statement was made earlier, and I think by the distinguished chairman, that General Jones had assured the committee that Red China does not have the capability to boycott, blockade Taiwan.

Well, not quite, Mr. President, not quite.

Actually, what General Jones said was, and I will read from page 747:

Now that does not mean that they could not develop that capability over a number of months, of course.

Obviously, they can. And in a number of months, not years.

Now, I wish to offend no one, but the administration has deliberately refused access to a report that I personally know is in existence and which was requested from a number of administration witnesses during the course of the committee's deliberation of this bill. It is now in my possession. It is a secret report, entitled "Consolidated Guidance Study No. 9, Taiwan's Military Requirements in a Post-Normalization Environment." It was made available to me today by a concerned citizen. In this report, high Pentagon officials are on record as knowing that Taiwan could be blockaded.

I am not going to quote from that secret report. I am not that kind of Senator. But if the distinguished chairman or any other Senator wants to see it, I will be glad to show it.

But, in any case, Mr. President, it seems to me to be rather ominous that this Senate should be debating the security of Taiwan this particular week, because it was exactly 20 years ago this week that the Dalai Lama in Tibet was forced to submit to Peking's terms with respect to Tibet's future status.

On March 9, 1959, the Dalai Lama attended a meeting of the Chinese State Council and was forced to accept various decrees including the establishment of a so-called "Preparatory Committee for the Autonomous Region of Tibet."

This action led to the exodus from Tibet of the Dalai Lama and many of his followers. From exile in India the Dalai Lama protested in April 1959 that in practice "decisions in all important matters were made by the Chinese authorities."

The Dalai Lama did not return to Tibet, but has remained in exile. Instead the Peking authorities proceeded with the communization of Tibet that led to another revolt by the people of Tibet. And all this was done under the authority of the agreement with Tibet signed in 1951 that allegedly granted them regional autonomy.

In a 17-point agreement signed in 1951 the PRC purportedly granted to Tibet regional autonomy. Does that sound familiar? It is instructive today to look at the language of this signed agreement by Peking and then the following historical record of ruthless suppression of the people of Tibet that led to the exodus of the Dalai Lama and many of his followers.

It is important to note especially articles 3, 4, 5, and 6 of this agreement, particularly as we now listen to supposedly soothing words of Teng Hsiao-ping about the future status of Taiwan. His are only words; Peking had a written agreement with Tibet and it was Chou En-lai, Teng's spiritual predecessors, who played a large role in "negotiating" this agreement.

Mr. President, I ask unanimous consent that the terms of this agreement be printed in the Record, that the brief chapter on the 1959 uprising in the book "Revolt in Tibet" be included, and the statement from exile of the Dalai Lama.

There being no objection, the material was ordered to be printed in the Record, as follows:

#### APPENDIX I

Agreement of Measures for the Peaceful Liberation of Tibet (17-point Agreement of May 23, 1951)<sup>1</sup>

The Tibetan nationality is one of the nationalities with a long history within the boundaries of China and, like many other nationalities, it has done its glorious duty in the course of creation and development of the great Motherland. But, over the last 100 years or more, imperialist forces penetrated into China and in consequences also penetrated into the Tibetan region and carried out all kind of deceptions and provocations. Like previous reactionary Governments, the Kuomintang reactionary Government continued to carry out a policy of oppression and sowing dissension among the nationalities, causing division and disunity among the Tibetan people. The local government of Tibet did not oppose the imperialist deception and provocation and adopted an unpatriotic attitude towards the great Motherland. Under such conditions the Tibetan nationality and people were plunged into the depths of enslavement and sufferings. In 1949 basic victory was achieved on a nation-wide scale in the Chinese people's war of liberation; the common domestic enemy of all nationalities—the Kuomintang reactionary Government—the aggressive imperialist forces—was driven out. On this basis the founding of the People's Republic of China (CPR) and (CPG) was announced.

In accordance with the Common Pro-

gramme passed by the Chinese People's Political Consultative Conference (CPPCC), the CPG declared that all nationalities within the boundaries of the CPR are equal and that they shall establish unity and mutual aid and oppose imperialism and their own public enemies, so that the CPR will become a big family of fraternity and co-operation, composed of all the nationalities. Within the big family of all nationalities of the CPR, national regional autonomy shall be exercised in where areas national minorities are concentrated and all national minorities shall have freedom to develop their spoken and written languages and to preserve or reform their customs, habits and religious beliefs, and the CPG shall assist all national minorities to develop their political, economic, cultural, and educational construction work. Since then, all nationalities within the country—with the exception of those in the areas of Tibet and Taiwan—have gained liberation. Under the unified leadership of the CPG and the direct leadership of higher levels of people's governments, all national minorities have fully enjoyed the right of national equality and have exercised, or are exercising, national regional autonomy.

In order that the influences of aggressive imperialist forces in Tibet might be successfully eliminated, the unification of the territory and sovereignty of the CPR accomplished, and national defence safeguarded; in order that the Tibetan nationality and people might be freed and return to the big family of the CPR to enjoy the same rights of national equality as all other nationalities in the country and develop their political, economic, cultural and educational work, the CPG, when it ordered the People's Liberation Army (PLA) to march into Tibet, notified the local government of Tibet to send delegates to the central authorities to conduct talks for the conclusion of an agreement on measures for the peaceful liberation of Tibet. At the latter part of April 1951 the delegates with full powers of the local government of Tibet arrived in Peking. The CPG appointed representatives with full power to conduct talks on a friendly basis with the delegates with full powers of the local government of Tibet. As a result of the talks both parties agreed to establish this agreement and ensure that it be carried into effect.

(1) The Tibetan people shall unite and drive out Imperialist aggressive forces from Tibet; the Tibetan people shall return to the big family of the Motherland—the People's Republic of China.

(2) The local Government of Tibet shall actively assist the PLA to enter Tibet and consolidate the national defences.

(3) In accordance with the policy towards nationalities laid down in the Common Programme of the CPPCC, the Tibetan people have the right of exercising national regional autonomy under the unified leadership of the CPG.

(4) The central authorities will not alter the existing political system in Tibet. The central authorities also will not alter the established status functions and powers of the Dalai Lama. Officials of various ranks shall hold offices as usual.

(5) The established status; functions and powers of the Panchen Ngoerhtehni (Lama) shall be maintained.

(6) By the established status, functions and powers of the Dalai Lama and of the Panchen Ngoerhtehni are meant the status, functions and powers of the thirteenth Dalai Lama and of the ninth Panchen Ngoerhtehni when they were in friendly and amicable relations with each other.

(7) The policy of freedom of religious belief laid down in the Common Programme of the CPPCC shall be carried out. The religious beliefs, customs and habits of the Tibetan people shall be respected and lama

monasteries shall be protected. The central authorities will not effect a change in the income of the monasteries.

(8) Tibetan troops shall be reorganised step by step into the PLA and become a part of the national defence forces of the CPR.

(9) The spoken and written language and school education of the Tibetan nationality shall be developed step by step in accordance with the actual condition in Tibet.

(10) Tibetan agriculture, livestock-raising, industry and commerce shall be developed step by step in accordance with the actual condition in Tibet.

(11) In matters related to various reforms in Tibet, there will be no compulsion on the part of the central authorities. The local Government of Tibet should carry out reforms of its own accord and, when the people raise demands for reform, they shall be settled by means of consultation with the leading personnel of Tibet.

(12) In so far as former pro-imperialist and pro-Kuon intang officials resolutely sever relations with imperialism and the Kuomintang and do not engage in sabotage or resistance, they may continue to hold office irrespective of their past.

(13) The PLA entering Tibet shall abide by all the above mentioned policies and shall also be fair in all buying and selling and shall not arbitrarily take a needle or thread from the people.

(14) The CPG shall have centralized handling of all external affairs of the area of Tibet; and there will be peaceful co-existence with neighbouring countries and establishment and development of fair commercial and trading relations with them on the basis of equality, mutual benefit and mutual respect for territory and sovereignty.

(15) In order to ensure the implementation of this agreement, the CPG shall set up a Military and Administrative Committee and a Military Area HQ in Tibet and—apart from the personnel sent there by the CPG—shall absorb as many local Tibetan personnel as possible to take part in the work. Local Tibetan personnel taking part in the Military and Administrative Committee may include patriotic elements from the local Government of Tibet, various districts and various principal monasteries; the name-list shall be set forth after consultation between the representative designated by the CPG and various quarters concerned and shall be submitted to the CPG for appointment.

(16) Funds needed by the Military and Administrative Committee, the Military Area HQ and the PLA entering Tibet shall be provided by the CPG. The local Government of Tibet should assist the PLA in the purchase and transport of food, fodder and other daily necessities.

(17) This agreement shall come into force immediately after signatures and seals are affixed to it.

Signed and sealed by delegates of the CPG with full powers: Chief Delegate Li Wei-han (Chairman of the Commission of Nationalities Affairs); Delegates Chang Ching-wu, Chang Kuo-hua Sun Chih-yuan. Delegates with full powers of the local Government of Tibet: Chief Delegate Kaloon Ngabou Ngawang Jugme (Ngabo Shape); Delegates Dzasak Khememey Sonam Wangdi, Khentrung Thupten Tenthar, Khentrung Thupten Lekmuun, Rimshi Sampo Tenzin Thundup.

Peking, 23rd May, 1951.

#### TIBETAN DISCONTENT GROWS

On April 29, 1954, the "Agreement between the Peoples' Republic of China and the Republic of India on Trade and Communications between the Tibet region of China and India" was signed in Peking, according to a Chinese communiqué, "bringing to an end the remnant privileges of the British and so

<sup>1</sup> The full text of the 'Agreement of the Central People's Government (CPG) and the local Government of Tibet on measures for the peaceful liberation of Tibet', was signed in Peking on May 23, 1951. The text herein was given by the New China News Agency. See also Concerning the Question of Tibet (Peking, 1959); pp. 14-10; Documents of International Affairs (London, Royal Institute of International Affairs), 1951, pp. 577-579.

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establishing the relations between China and India, concerning Tibet, on a new basis". The Agreement laid down five broad principles in addition to the liquidation of the Indian claims.

According to the Agreement India accepted the principle that Tibet constituted an integral part of China, and agreed to withdraw completely within six months the Indian contingent that had been stationed for decades at Yatung and Gyantse. Peking, it was stated, would render all assistance and facilities in aiding the withdrawal of Indian troops.

India agreed also to hand over all her property in Tibet to the Chinese authorities, leaving questions of detail regarding cost and manner of payment to be worked out later. These properties included all the telegraph, public telephone, and postal establishments, together with their equipment, and twelve rest houses situated in various parts of Tibet.

The Agreement, containing six articles, related only to the two issues of trade and pilgrim traffic. China would be permitted to open three trade agencies, in New Delhi, Calcutta and Kalimpong, while India would be allowed to establish similar offices at Yatung, Gyantse and Gartok. All trade and pilgrim traffic should henceforth be confined to six specific routes along the two-thousand-mile common frontier.

The Trade Pact, as it was briefly called, was proclaimed in India and China and the five principles, outlined in the preamble, which formed the basis of the pact—mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in each other's internal affairs, equality and mutual benefit and peaceful co-existence—became known as "The Five Principles of Peaceful Co-Existence", or "Panch Shila" in India, and were later taken up at Bandung as the accepted policy of the Afro-Asian bloc.

India gained practically nothing concrete from the pact. It was rumoured in Indian official circles that Mr. Nehru had hoped to obtain a fixed delineation of the hitherto vague border between Tibet and India, so limiting China's expansionist ambitions, but if this were the case it was another diplomatic defeat for India.

In a speech delivered in India's Lok Sabha on a debate on the international situation on May 15, 1954, Acharya T. B. Kripalani, the Leader of the Opposition, said:

"Recently we have entered into a treaty with China. This treaty concerns the whole of India. It does not concern a party or a person, it affects us all. We feel that China, after it had gone Communist, committed an act of aggression in Tibet. The plea is that China had the ancient right of suzerainty. This right was out of date, old and antiquated. It was theoretical; it was never exercised or very rarely exercised and even then in theory. It had lapsed by the flux of time. . . . I consider this as much a colonial aggression on the part of China as any colonial aggression indulged in by Western nations. The definition of colonialism is that one nation by force of arms and fraud occupies the territory of another nation. . . . Whether certain nations commit aggression against other peaceful nations does not always concern us. But in this case we are intimately concerned, because China has destroyed what is called a buffer state. In international politics, when a buffer state is destroyed by a powerful nation, that nation is considered to have committed aggression against its neighbours. . . . It is also well-known that in the new map of China other border territories like Nepal, Sikkim, etc., figure. This gives us an idea of the aggressive designs of China. . . . I do not say that because China conquered Tibet we should have gone to war with it. It was possible. But we did well in not going to war. But this does not mean that we should recognize the

claims of China in Tibet. We must know that it is an act of aggression against a foreign nation. It is as abominable as colonialism of any Western power. . . ."

While Prime Minister Nehru and Chou En-lai were being acclaimed throughout Asia for their magnanimous and enlightened approach to relations between nations, Tibet, which had been the object of discussion and agreement, took a radically different view. The growing bitterness against India felt by Tibetans of all classes since 1950, which they interpreted as cynical self-interest and betrayal, flared up into public demonstration inside Tibet.

Posters were printed and pasted on to walls throughout Lhasa and copies were sent to all towns and monasteries in Tibet. The text was published in the *Tibet Mirror*, issued in Kalimpong on June 1, 1954:

"To Leaders, Officials, Monks, Soldiers, Traders, Craftsmen, Agriculturists, Nomads—the People of Tibet.

"This is to alert you to the great danger threatening our common cause, the independence of Tibet, regarding which I feel compelled to speak a few words.

"1. The last edition of the *Tibet Mirror* carried translations of articles from Indian papers of a trade pact signed at Peking between India and China regarding Tibet. There was a statement that "discussion in Peking related only to procedural matters and not to the substance of the issue." Neither was there any mention of which particular treaty formed the basis of the talks. Further, no full copy of the agreement was made public.

"2. Were the talks based on the Trade Regulations of 1893 or of 1908, both of which were mentioned in regard to the Peking Trade Agreement? If so, it is a violation of the Simla Convention of 1914 whereby both of those Trade Regulations are declared revoked in Clause 7.

"3. The Peking Trade Pact refers to Tibet as "an integral part of China", and there are many mentions of the "Tibet region of China", these being terms unprecedented in the history of Tibet and also another violation of the terms of the Simla Convention, Clauses 3 and 9 of which first of all recognized the mutual independence of Tibet inasmuch as the Tibetan Government kept her existing rights, which until the time of the recent invasion of Tibet included the management of her external affairs; secondly, guaranteed the non-violation of Tibetan territory, Great Britain and China agreeing to abstain from sending their troops, stationing civil and military officers, or establishing colonies in Central Tibet.

"4. The Simla Convention was signed by the fully empowered representatives of the three Governments of Tibet, India and China, whereas the Peking Pact was concluded between India and China, the wishes of the Government and people of Tibet being completely ignored. This makes it clear that China wishes not only to absorb Tibet but to destroy our culture, religion and eventually our race by intermarriage, as is shown by their moves to try to get in, in addition to the two hundred and twenty thousand in the Liberation Army already in Tibet, a further two million Chinese for the so-called economic development of our country. It is only too obvious how our two neighbours are willing to come to private arrangements in favour of aggression so as to serve their own inter-Asian imperialist policies.

"5. Please read carefully the second Independent Treaty signed at Simla between Tibet and the British Government in India, on the same day, and immediately after, the Tripartite Simla Convention, as it recognized not the autonomy but the complete independence of Tibet, as follows:

"The Government of China refusing to fix her official seal thereto and in default of

which, all rights and privileges claimed by the Government of China in and with regard to Tibet, are hereby declared revoked."

The protest, circulating in Tibetan inside a closed Tibet, evoked no sympathy or response either in India or the outside world.

What was extremely significant about its widespread circulation inside Tibet was the fact that the anti-Chinese demands were now so numerous and strongly entrenched that such could now be printed and distributed throughout the country without detection of the organizers.

The chief anti-Chinese organization involved in the demonstrations and pamphletting was a group known as the *Mi-mang Tsong-du* (or People's Party). While nationalist and subversive, they limited themselves to public demonstrations against unpopular Chinese Communist measures and took no part in violent activities of any form. Notices appeared on the walls of buildings overnight denouncing or mocking the Chinese occupation personnel; Chinese notices were torn down or besmeared with manure; Chinese parades or demonstrations were bombarded from densely packed crowds with dried yak dung and stones, or there were cleverly organized 'silences'. When the Chinese arrested some of the more prominent and handed them over for trial to the Tibetan courts they were released shortly afterwards on 'insufficient evidence', or some other bland reason. At their own demonstrations they could number four or five thousand people, and the Chinese dared do no more than arrest some of the more extreme orators and even then, as indicated, only hand them over to the Tibetan courts with complaints.

In June 1954 the Dalai Lama received an invitation from the Chinese Government to visit Peking and other places in China. The invitation evoked an immediate protest in Tibet and there were many demonstrations to protest against the Dalai Lama leaving the country, the general suspicion being that he would not be permitted to return.

In addition to demonstrations the *Mi-mang Tsong-du* in Lhasa secretly organized a mass revolt on the day scheduled for the Dalai Lama's departure, when thousands of Tibetans were to throw themselves in the Dalai Lama's path so that he could not pass through them without having to walk over their bodies. The Chinese got word of their plans, and several days before the scheduled date of departure moved the Dalai Lama to a relative's house and from there on his way to China.

However, the Chinese were unpleasantly surprised by the intensity of the feeling shown by the Tibetans to their invitation to the Dalai Lama and gave strong assurances that he would be well treated in China. On the other hand, it did not prevent them from engineering at least two attempts on the Dalai Lama's life on his way to China. On one occasion a bridge mysteriously collapsed just after the Dalai Lama had crossed over, and the Chinese blamed Kham bandits; and on another occasion a landslide almost carried the party away.

The Panchen Lama had also been invited to visit China at the same time. For some while the Chinese had been building up the Panchen Lama's influence in Tibet, both to undermine the Dalai Lama's prestige and to seek to divide the Tibetans into two camps over the centuries-old controversy so that they could be dealt with more easily.

After Britain, China and Tibet had signed the Tripartite Treaty in 1914 and then Panchen Lama, who was very pro-Chinese, was forced to flee in 1920 to China where the Kuomintang Party was emerging as the new government. Right away the Panchen Lama began scheming with the Kuomintang officials to support him with money, arms and men to re-enter Tibet, but the new Kuomintang Government was in no position to indulge in such adventures.

In 1933 the Thirteenth Dalai Lama died. During his reign it had been virtually impossible for a Chinese national, civil or military, to enter Tibet, but as it usually took several months or years to discover a reincarnation of the Dalai Lama the ageing Panchen Lama prevailed upon the Kuomintang Government to assist him in 'liberating' Tibet. On this occasion help was given, and while the Chinese forces were converging on Tibet's eastern borders a Chinese goodwill mission was sent to Lhasa to persuade a leaderless Tibetan Government to accept a permanent Chinese delegation in Lhasa on grounds of common cultural and religious ties. As a direct result of this offensive, in 1935 a meeting was called in Lhasa and it was decided that the Panchen Lama should be allowed to re-enter Tibet accompanied by his household and a few followers, but before he could take advantage of this the Panchen Lama died in China.

When the new reincarnation of the Dalai Lama was discovered in 1938 in Amdo Province a new reincarnation of the Panchen Lama was found in that same year and in the same province. The position of this reincarnation, however, was still unsettled as there was a simultaneous discovery of two other claimants in Lhasa. According to custom the authorities in Lhasa requested the Amdo claimant to appear in Lhasa for verification of his claims, but the Chinese authorities, for obvious reasons of their own, refused to comply with this request and some years later, without consultation with Lhasa, officially installed their protégé as the new Panchen Lama. When the Kuomintang Government was defeated and fled to Formosa the Chinese Communist Government took over the care and training of the Amdo Panchen Lama.

In 1950, 'at the request of the Panchen Lama', the Chinese ordered the People's Liberation Army into Tibet, and in 1951 the Panchen Lama was present for the talks conducted by the Chinese Communists with the Tibetan goodwill mission on the special initiative of the Peking Government. The pact which recognized China's suzerainty over Tibet acknowledged also the Amdo reincarnation as the true Panchen Lama. In 1952 the newly declared Panchen Lama, escorted by a strong force of Chinese troops, entered Lhasa, and from that time the Chinese had made every effort to build him up politically, but the Tibetan Government and people, while accepting the installation under force of circumstances, refused to recognize him as anything more than a spiritual figure. The Chinese tried by every means to override the objections of the Tibetan people and on every public occasion introduced the Panchen Lama as an equal to the Dalai Lama.

After being in China several months the Dalai Lama and Panchen Lama were invited to attend a meeting of the Chinese State Council on March 9, 1955, where they were forced to submit to a number of decisions on Tibetan affairs. One of these decisions was the establishment of a 'Preparatory Committee for the Autonomous Region of Tibet'. The Committee consisted of fifty-one members, fifteen from the Lhasa administration, ten from the 'Panchen Lama's Bureau', ten from the Chamdo 'People's Liberation Committee', eleven from monasteries and 'People's Organizations', and five representing the Chinese Government, with the Dalai Lama being named a chairman. It was announced that the members of the Committee were appointed 'with the approval of the Chinese State Council' and the three regions of Tibet were subordinate to it. It was also stated that the chief task of the Preparatory Committee was to prepare for regional autonomy in accordance with the provisions of the Chinese Constitution, the Agreement of 1951 and the concrete circumstances of Tibet. The first meeting of this Preparatory

Committee was held on April 22, 1956, and thereafter there were in the next three years twenty-seven meetings out of which the Dalai Lama was present at and presided over twenty-five. But on his arrival in India the Dalai Lama stated at Tezpur on April 15, 1959, that 'in practice, even his body had little power and decisions in all important matters were taken by the Chinese authorities'.

In China during the visit of the two Lamas the Peking Government went out of its way to show preference for the Panchen Lama on every occasion, presumably to impress upon the Dalai Lama how they were prepared to treat those who co-operated with them. If this were so the rather naive policy had exactly the opposite effect, and as the Dalai Lama went about the country, saying the proper things prepared for him by his hosts but noting particularly their attitude towards religion, the complete absorption in ruthless materialistic policies, the cynical playing off of the Panchen Lama against himself to further their own ends, he came to certain very definite conclusions in his own mind. He said nothing to anyone at the time, not even to Mr. Nehru, whom he met in Peking during the Indian Prime Minister's visit to China, and who asked him in a private conversation if there was anything India could do to help Tibet, and it was only later that I was able to find out his impressions from his family.

Meanwhile in Tibet the Tibetans were becoming uneasy at the unduly prolonged visit which seemed to confirm their suspicions that the Chinese were going to hold the Dalai Lama in China as a hostage. Demonstrations were organized in Lhasa by the Mimang Tsong-du demanding his early return, and even in Kalimpong there was a mass protest and public prayers. From Tingri in West Tibet, an area noted for its fighters, several hundred Tibetans marched to Lhasa to add their voices to the general request and also threaten armed action if the Dalai Lama were not returned immediately.

If the Chinese had ideas about the Dalai Lama they were quickly changed in view of this ominous reaction and he was permitted to return to Tibet.

Shortly after his arrival in Lhasa evidence of his new attitude to Communist China began to appear, both directly and indirectly. Immediately there was a hardening of official opposition to Chinese proposals. The move by the Chinese to have Chinese paper currency substituted for the silver Tibetan currency was flatly rejected, and the offer of economic integration with China refused. The Chinese then countered with an order that only traders with letters of credit issued by the Bank of China and negotiable in branches in India would be allowed to trade—and found themselves with a monumental leakage of Chinese silver coins being smuggled into India. They failed to elicit any enthusiasm for their project and the Preparatory Committee for the Autonomous Region of Tibet became increasingly exasperated by Tibetan excuses at inability to attend.

On the 23rd day of the Tibetan fifth month (July-August) 1955 the Dalai Lama made a public speech in Norbulinka, the summer palace. After reviewing the history of Tibet and pointing out that when there was a balanced emphasis on both religion and politics the country had prospered, but that when politics took prominence over religion to the exclusion of the latter there was national deterioration, he went on:

'At present and in the future we shall carry out many new changes both in our religious and political life, and this is the urgent task which faces us. But in what way can we make progress? Today our Tibetan people are facing many difficulties from every side. We have no strength of our own and we have no political experience. We have no means to progress in any way.

It is for this reason that the Chinese Communists have sent their men here to help us in the reconstruction of Tibet. But we must recognize very clearly that the Chinese Communists have not come here to control us, or become our masters, or to oppress us. We should adopt a friendly attitude towards them.

'If the Chinese Communists have come to Tibet to help us, it is most important that they should respect the Tibetan people's own social system, culture, customs and habits, and honour the wishes of the whole people of Tibet, and not obstruct or do damage to the high principles of our nation. If the Chinese Communist personnel in Tibet do not understand the conditions, and harm or injure our people, you should immediately report the facts to the Government. The Government will certainly take steps to make them correct their ways. If the Chinese Communists do not correct their ways our Government can immediately ask for their expulsion.

'I hope all our Tibetan people will take upon themselves the responsibility for carrying out the various tasks allotted to them. For example, if the members of a family can themselves control and carry out the affairs of the family that family may be said to be a self-managed family or an independent one. A country is also in the same position as a family. I sincerely hope that the officials of the Government and the people will stand at their posts, will remain determined in their attitudes, carrying out their responsibilities and using their full strength in performing their duties.

'Today I am very pleased with the officials of the Government and the people and thank them for working extremely hard for the welfare of their district, Government and country. But there are some officials and people who have a very narrow outlook and cannot take a broad view of things. For their own selfish advancement and under the attraction of glittering gold they do not care for the good of the country and the people, they practice oppression and deceit, they give trouble to the people and harm the Government, and thus are responsible for great harm to the country. I would request such people to correct their former mistakes and, becoming new men, atone for their misdeeds in the interests of the country and the people. Besides them there are some few people who disregard their national culture and history, consider themselves to be progressive, and who have changed their ways to doing what they like in a very confused manner. I regard such ideas as mistakes. Progress cannot be attained suddenly in a confused manner and must be attained gradually in an ordered way. Again, there are Government officials who are envious of each other, create conflicts and bitterness, and cannot cooperate with each other. Because they fritter away their energies they cannot carry out the work of the administration effectively. I desire that they give up their selfish attitude and take a broad view of things, correct each other and become united together. Only by doing so can we create and develop our strength. For example, it is not possible for a single person to lift a big stone using his own strength, but if the strength of several people is pooled together it becomes very easy to lift the same stone. This is a very simple example but I know that all of you will pay special attention to this matter.

'Tibet consists of Kham, Tsang, U and Amdo, and all consist of the Tibetan people. Their spirit and way of living have such intimate connexions that they cannot be separated from each other. I hope that all of you will deeply think over this matter, love each other, and be united with each other, and not become separated from each other.

'Finally, I hope that the people of the whole of Tibet by their unity and co-opera-



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tion will increase our strength and put all their energies into the construction of a new Tibet based on the unity of political life and religion.

This outspoken speech was wildly acclaimed in Lhasa and other parts of Tibet for it marked the emergence of the Dalai Lama on the political scene in favour of a united 'Greater Tibet' without Chinese occupation, and it immediately encouraged and strengthened the hands of the anti-Chinese groups throughout the country.

Two months later the Mi-mang Tsong-du came out publicly with an even stronger declaration.

'We Tibetan people make the following appeal because we oppose the Chinese Communists who are destroying all our customs and systems, and also because of the complete breach of the Seventeen-Point Sino-Tibetan Agreements signed by them. . . .

'But speaking about the present situation in Tibet we declare that our religion is facing a very grave crisis which has thrown us into the very deep valley of darkness and destruction. The Dalai Lama has been robbed of his political and religious powers. The future of the Tibetan nation is facing as grave a danger as a candlelight in a severe storm. The root cause of this crisis is the oppressive ways in which the Chinese Communists have been forcing Communist ideas upon the Tibetan people, the most deplorable policy of violence practised by the Chinese Communists, and the failure of the Chinese Communists to implement any of the promises made by them to the Tibetan people. In order to save our country from this dangerous future we have already, on a previous occasion, made a formal protest to the Chinese Government and the Dalai Lama.

'Formerly, under the Dalai Lama, there were Regents, Kashag and the various other Government organizations which carried out the administration of the whole of Tibet. But since the occupation of Tibet by the Chinese Communists all the former organizations of the Government have ceased to function and the Chinese Communists have established a large number of illegal organizations in their place to carry out the administration. . . . The Chinese Communists have not only increased administrative organizations but they have also established organizations such as the "Patriotic Youth League" and the "Chinese Schools", with the sole object of forcibly indoctrinating the youth of Tibet in Communism, and thus to destroy the culture and civilization of the nation. Moreover, in opposition to the will of the people the Chinese Communists have destroyed the social system of Tibet in which political and religious life are joined together, and have also destroyed the religion of the Tibetan people. Therefore we, in the name of the people of Tibet, have come forward to appeal to the Dalai Lama. We request that the Dalai Lama stop the organization of the "Patriotic Youth League", close the "Chinese Schools" and prevent the indoctrination of the Tibetan people in Communism by the Chinese Communists. We are now resolved not to accept the establishment of the proposed Regional Autonomous Government in Tibet as we already have the Government of the Dalai Lama. At the same time we also request the Chinese Communist Military Representative in Tibet to allow us to go to Peking to lodge this protest. If the Chinese Communists disregard the people's wishes, and by force, oppression and violence suppress the earnest appeal of the people, we, in the name of all the people of Tibet, are fully resolved to shed our blood and sacrifice our lives to oppose the Communists and we shall definitely not cooperate in any of the activities of the Chinese Communists in Tibet.'

## THE DALAI LAMA BEARS WITNESS

(The Dalai Lama has issued four statements which have had worldwide publicity. The first went out from Tezpur, shortly after his arrival in India; the second followed almost immediately and was a refutation of Peking's charge that the Tezpur statement was issued under duress. The third was given to the press at Mussoorie nearly two months later, when news that he was getting from Tibet had confirmed his earlier appraisal of the situation in his homeland. Frequent quotations from these statements appear in the texts that follow; but the very obvious truthfulness of his testimony, his eagerness to have international inspection of the situation in Tibet and his simple belief that "the truth shall make you free", make these the most important documents yet submitted to the world on the Tibetan Question.)

THE DALAI LAMA'S STATEMENT IN TEZPUR, INDIA, ON APRIL 18, 1959

It has always been accepted that the Tibetan people are different from the Han people of China. There has always been a strong desire for independence on the part of the Tibetan people. Throughout history this has been asserted on numerous occasions. Sometimes the Chinese Government has imposed its suzerainty on Tibet and at other times Tibet has functioned as an independent country. In any event, at all times, even when the suzerainty of China was imposed, Tibet remained autonomous in control of its internal affairs.

In 1951 under pressure of the Chinese Government a 17-article agreement was made between China and Tibet. In that agreement the suzerainty of China was accepted as there was no alternative left to the Tibetans. But even in the agreement it was stated that Tibet would enjoy full autonomy. Though the control of external events were to be in the hands of the Chinese Government it was agreed that there would be no interference by the Chinese Government with Tibetan religion and customs and her internal administration. In fact, after the occupation of Tibet by Chinese armies the Tibetan Government did not enjoy any measure of autonomy, even in internal matters and the Chinese Government exercised full powers in Tibetan affairs.

In 1956 a preparatory committee was set up for Tibet with the Dalai Lama as the Chairman and the Panchen Lama as Vice-Chairman and General Chang Kuo-hua as the representative of the Chinese Government. In practice, even this body had little power and decision in all important matters were taken by the Chinese authorities. The Dalai Lama and his government tried their best to adhere to the 17-article agreement but interference of the Chinese authorities persisted. By the end of 1955 a struggle had started in Kham Province and this assumed serious proportions in 1956. In the consequential struggle, Chinese armed forces destroyed a large number of monasteries.

Many Lamas were killed and a large number of monks and officials were taken and employed on the construction of roads in China and interference in the exercise of religious freedom increased.

The relation of the Tibetans with China became openly strained from the early part of February 1959. The Dalai Lama had agreed a month in advance to attend a cultural show in the Chinese headquarters and the date was suddenly fixed for the 10th of March. The people of Lhasa became apprehensive that some harm might be done to the Dalai Lama and as result about 10,000 people gathered around the Dalai Lama's summer palace at Norbue Lingka and physically prevented the Dalai Lama from attending the function.

Thereafter the people themselves decided

to raise a bodyguard for the protection of the Dalai Lama. Large crowds of Tibetans went about the streets of Lhasa demonstrating against Chinese rule in Tibet. Two days later thousands of Tibetan women held demonstrations protesting against the Chinese authorities. In spite of this demonstration from the people the Dalai Lama and his government endeavoured to maintain friendly relations with the Chinese and tried to carry out negotiations with the Chinese representatives as to how best to bring about peace in Tibet and assuage the people's anxiety.

While these negotiations were being carried out reinforcements arrived to strengthen the Chinese garrisons in Lhasa and Tibet. On the 17th of March, two or three mortar shells were fired in the direction of Norbue Lingka Palace. Fortunately the shells fell in a nearby pond.

After this, the advisers became alive to the danger to the person of the Dalai Lama and in those difficult circumstances it became imperative for the Dalai Lama, members of his family and his high officials to leave Lhasa.

The Dalai Lama would like to state categorically that he left Lhasa and Tibet and came to India of his own free will and not under duress.

It was due to the loyalty and affectionate support of his people that the Dalai Lama was able to find his way through a route which is quite arduous. The route which the Dalai Lama took involved crossing Kyichu and Tsang-po rivers and making his way through Loka area, Yarlung valley and Psonadzhong before reaching the Indian frontier at Kanseymane near to Chuttanmu.

On March 29, 1959 the Dalai Lama sent emissaries to cross the Indo-Tibetan border requesting the government of India's permission to enter India and seek asylum there. The Dalai Lama is extremely grateful to the people and government of India for their spontaneous and general welcome as well as asylum granted to him and his followers.

India and Tibet have religious, cultural and trade links over a thousand years and for the Tibetans it has always been a land of enlightenment having given birth to Lord Buddha. The Dalai Lama is deeply touched by kind greetings extended to him on his safe arrival in India by Prime Minister Jawaharlal Nehru and his colleagues in the government of India. The Dalai Lama has already sent a reply to this message of greeting.

Ever since the Dalai Lama entered at Kanseymane near Chuttanmu he has experienced in full measure the respect and hospitality extended to him by the people of Kameng Frontier Division of the Northeast Frontier Agency and the Dalai Lama would like to state how the Government of India's officers posted there has spared no effort in making his stay and journey through this extremely well-administered part of India as comfortable as possible.

The Dalai Lama will now be proceeding to Mussoorie which he hopes to reach in the next few days. The Dalai Lama will give thought to his future plans and if necessary give expression to them as soon as he has had a chance to rest and reflect on recent events.

His country and people have passed through an extremely difficult period and all that the Dalai Lama wishes to say at the moment is to express his sincere regret at the tragedy which has overtaken Tibet and fervently hope that these troubles will be over soon without any more bloodshed.

As the Dalai Lama and the spiritual head of all Buddhists in Tibet, his foremost concern is the well-being of his people and in

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insuring perpetual flourishing of his sacred religion and freedom of his country.

While expressing once again thankfulness at his safe arrival in India the Dalai Lama would like to take this opportunity to communicate to all his friends, well wishers and devotees in India and abroad his sincere gratitude for many messages of sympathies and concern with which they have flooded him.

STATEMENT BY THE DALAI LAMA MADE ON APRIL 22, 1959

On April 18, I issued a statement at Tezpur. I did not wish to follow it up with another statement at this stage. However I have seen a New China News Agency report implying that I was not responsible for this earlier statement. I wish to make it clear that the earlier statement was issued under my authority and indicated my view and I stand by it. I am making this brief statement to correct the wrong impression created by the New China News Agency's report and do not propose to state anything more at present.

TEXT OF THE DALAI LAMA'S STATEMENT OF JUNE 20, 1959 AT MUSSOORIE, INDIA

Ever since my arrival in India I have been receiving almost every day sad and distressing news of the suffering and inhuman treatment of my people. I have heard almost daily with a heavy heart of the increasing agony and affliction, their harassment and persecution and of the terrible deportation and execution of innocent men. These have made me realize forcibly that the time has manifestly arrived when in the interests of my people and religion and to save them from the danger of near annihilation, I must not keep silent any longer but must frankly and plainly tell the world the truth about Tibet and appeal to the conscience of all peace-loving and civilized nations.

To understand and appreciate the significance and implication of the recent tragic happenings in Tibet, it is necessary to refer to the main events which have occurred in the country since 1950.

It is recognized by every independent observer that Tibet had virtually been independent by enjoying and exercising all rights of sovereignty whether internal or external. This has also been implicitly admitted by the Communist Government of China for the very structure, terms and conditions of the so-called agreement of 1951 conclusively show that it was an agreement between two independent and sovereign States. It follows, therefore, that when the Chinese armies violated the territorial integrity of Tibet they were committing a flagrant act of aggression. The agreement which followed the invasion of Tibet was also thrust upon its people and Government by the threat of arms. It was never accepted by them of their own free will. The consent of the Government was secured under duress and at the point of the bayonet.

My representatives were compelled to sign the agreement under threat of further military operations against Tibet by the invading armies of China leading to utter ravage and ruin of the country. Even the Tibetan seal which was affixed to the agreement was not the seal of my representatives but a seal copied and fabricated by the Chinese authorities in Peking and kept in their possession ever since.

While I and my Government did not voluntarily accept the agreement we were obliged to acquiesce in it and decided to abide by the terms and conditions in order to save my people and country from the danger of total destruction. It was, however, clear from the very beginning that the Chinese had no intentions of carrying out the agreement.

Although they had solemnly undertaken to maintain my status and power as the Dalai Lama, they did not lose any opportunity to undermine my authority and sow dissension among my people. In fact, they compelled me, situated as I was, to dismiss my Prime Ministers under threat of their execution without trial, because they had in all honesty and sincerity resisted the unjustified usurpations of power by representatives of the Chinese Government in Tibet.

Far from carrying out the agreement they began deliberately to pursue a course of policy which was diametrically opposed to the terms and conditions which they had themselves laid down. Thus commenced a reign of terror which finds few parallels in the history of Tibet. Forced labour and compulsory exactions, a systematic persecution of the people, plunder and confiscation of property belonging to individuals and monasteries and execution of certain leading men in Tibet, these are the glorious achievements of the Chinese rule in Tibet.

During all this time, patiently and sincerely I endeavoured to appease my people and to calm down their feelings and at the same time tried my best to persuade the Chinese authorities in Lhasa to adopt a policy of conciliation and friendliness. In spite of repeated failures I persisted in this policy till the last day when it became impossible for me to render any useful service to my people by remaining in Tibet. It is in these circumstances that I was obliged to leave my country in order to save it from further danger and disaster.

I wish to make it clear that I have made these assertions against the Chinese officials in Tibet in the full knowledge of their gravity because I know them to be true. Perhaps the Peking Government is not fully aware of the facts of the situation.

But if it is not prepared to accept these statements let it agree to an investigation on the point by an international commission. On our part I and my Government will readily agree to abide by the verdict of such an impartial body.

It is necessary for me to add that before I visited India in 1956 it had become increasingly clear to me that my policy of amity and tolerance had totally failed to create any impression on the representatives of the Chinese Government in Tibet.

Indeed they had frustrated every measure adopted by me to remove the bitter resentment felt by my people and to bring about a peaceful atmosphere in the country for the purpose of carrying out the necessary reforms. As I was unable to do anything for the benefit of my people I had practically made up my mind when I came to India not to return to Tibet until there was a manifest change in the attitude of the Chinese authorities. I therefore sought the advice of the Prime Minister of India who has always shown me unfailing kindness and consideration. After his talk with the Chinese Prime Minister and on the strength of the assurances given by him on behalf of China, Mr. Nehru advised me to change my decision.

I followed his advice and returned to Tibet in the hope that conditions would change substantially for the better and I have no doubt that my hopes would have been realized if the Chinese authorities had on their part carried out the assurances which the Chinese Prime Minister had given to the Prime Minister of India.

It was, however, painfully clear soon after my return that the representatives of the Chinese Government had no intention to adhere to their promises. The natural and inevitable result was that the situation steadily grew worse until it became impossible to control the spontaneous upsurge of my people against the tyranny and oppression of the Chinese authorities.

At this point I wish to emphasize that I

and my Government have never been opposed to the reforms which are necessary in the social, economic and political systems prevailing in Tibet.

We have no desire to disguise the fact that ours is an ancient society and that we must introduce immediate changes in the interests of the people of Tibet. In fact, during the last nine years several reforms were proposed by me and my Government but every time these measures were strenuously opposed by the Chinese in spite of popular demand for them, with the result that nothing was done for the betterment of the social and economic conditions of the people.

In particular it was my earnest desire that the system of land tenure should be radically changed without further delay and the large landed estates acquired by the State on payment of compensation for distribution amongst the tillers of the soil. But the Chinese authorities deliberately put every obstacle in the way of carrying out this just and reasonable reform. I desire to lay stress on the fact that we, as firm believers in Buddhism, welcome change and progress consistently with the genius of our people and the rich tradition of our country.

But the people of Tibet will stoutly resist any victimization, sacrilege and plunder in the name of reforms—a policy which is now being enforced by the representatives of the Chinese Government in Lhasa.

I have attempted to present a clear and unvarnished picture of the situation in Tibet. I have endeavoured to tell the entire civilized world the real truth about Tibet, the truth which must ultimately prevail, however strong the forces of evil may appear to be today. I also wish to declare that we, Buddhists, firmly and steadfastly believe in peace and desire to live in peace with all the peoples and countries of the world. Although recent actions and policies of the Chinese authorities in Tibet have created strong feelings of bitterness and resentment against the Government of China, we Tibetans, lay and monk alike, do not cherish any feelings of enmity and hatred against the great Chinese people.

We wish to live in peace and ask for peace and goodwill from all the countries of the world. I and my Government are, therefore fully prepared to welcome a peaceful and amicable solution of the present tragic problem, provided that such a solution guarantees the preservation of the rights and powers which Tibet has enjoyed and exercised without any interference prior to 1950.

We must also insist on the creation of a favourable climate by the immediate adoption of the essential measures as a condition precedent to negotiations for a peaceful settlement. We ask for peace and for a peaceful settlement but we must also ask for the maintenance of the status and the rights of our State and people.

To you gentlemen of the Press I and my people owe a great debt of gratitude for all that you have done to assist us in our struggle for survival and freedom. Your sympathy and support has given us courage and strengthened our determination. I confidently hope that you will continue to lend that weight of your influence to the cause of peace and freedom for which the people of Tibet are fighting today.

Mr. HELMS. Mr. President, some people are saying "Why, Senator, do you bring all this up?"

Well, if we do not learn from history, we are going to remain ignorant. If we do not know now what we are dealing with and if we do not describe it clearly, then we deserve what we will get.

But the problem is that our friends and allies on Taiwan are going to be getting something they do not deserve.

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I repeat that it is important to note especially articles 3, 4, 5 and 6 of the agreement I referred to a moment ago, the so-called the Agreement of Measures for the Peaceful Liberation of Tibet, particularly as we now listen to supposedly soothing words about how we have taken care of everything.

After all, we had that cuddly little panda bear Vice President Teng here not long ago, and we fawned over him—about as cute and cuddly as a rabid panda bear.

But when are we going to learn what we are dealing with, Mr. President, and when are we going to start acting like Americans?

I find myself more and more appalled as we back up and back up and say, "Oh, we must not offend this Communist nation, or that one, we must appease and we must coexist."

Mr. PERCY. Will the Senator yield for a question?

Mr. HELMS. Yes.

Mr. PERCY. The distinguished Senator from North Carolina used a phrase, "When are we going to start acting like Americans?"

That brings to mind, I would tend to think, the times we have really defined our national interests, we have really stood for something, and our standing for something made a difference.

Mr. HELMS. Exactly.

Mr. PERCY. In human history.

Mr. HELMS. The Senator is exactly right.

Mr. PERCY. In the history of the world as to whether we have a free Europe. Our standing for something could make a difference as to whether there is an Israel or not.

I think the problem is the U.S. decline in the opinion of the world. It is because we have not acted as the world has learned to respect Americans for acting in the past.

It brings to mind what kind of development we are going to have in the Gulf area now. We have a pattern developing in the Gulf area.

South Yemen, moved from being a British colony, oriented in and tipped heavily toward the Labor Party unions, to what is now classified as Marxist. North Yemen has had three presidents in the last 2 years, two of them assassinated. The feeling is rather strong that the South Yemenites had something to do with at least one of those assassinations.

They want to change the North Yemen Government. They want to, just like North Vietnam, just like North Korea, they want to unify it, the Yemenites, and bring them all together under one flag, as long as it is red.

Mr. HELMS. That is right.

Mr. PERCY. They are very clear about what they want to do.

Mr. HELMS. Once again the distinguished Senator is right.

Mr. PERCY. And if they cannot get it by killing the chief executive officers of the country, then they start harassing him in three different places on the borders, as they are doing right at this very minute.

Now, the Soviet Union is not equivocating about what they are doing.

They are supplying equipment, manpower, and training.

The Government of North Yemen has a large population, 6½ million. But of that, a million are in Saudi Arabia.

What would happen if South Yemen took over North Yemen? What would happen? The men up there would be held hostage because their families would be down in North Yemen and the men are up in Saudi Arabia.

This would cause concern on the part of the Saudi Arabians because they also saw Afghanistan fall. They see the beginning of a pattern, and they are worried about what we are going to do. They wonder when we are going to start acting like Americans.

Are our vital interests concerned in the gulf area? You bet they are.

Mr. HELMS. You bet they are.

Mr. PERCY. This country can be brought to its knees economically overnight, and do not think our adversaries do not have that in mind.

Khrushchev said quite honestly, "We're going to bury you." He did not mean they are going to take the risk of fighting us. They have been through a war. They lost 20 million people. They found a much easier way to do it. It is to just create a little chaos. A little trouble starts in Iran—throw in the chaos, ferment the thing. Get the Cubans to do it. After all, they are sending a million dollars a day to them—eating all that sugar, smoking all those cigars. Why not have the Cubans do something for them?

So they are waiting around in South Yemen to see whether they are needed. They are down there training forces in South Yemen today. When are we going to start acting like Americans?

All the people in the world are standing there waiting to see what the United States of America is going to do in the Middle East, in the Persian Gulf, in the Indian Ocean, and in Europe. The People's Republic of China has criticized us for not fighting, in a sense, for what we believe in and for what they conceive to be our mutuality of interests, including our deep mutual concern about the intentions and the capabilities of the Soviet Union. Therefore, I think they will understand if we make it very clear how we feel about Taiwan, how we feel about these 17 million people, how we have had for 30 years, how we feel about the representations we have made: that we intend to keep up the cultural and educational exchanges, that we intend to keep up Taiwan's defense capability.

I wonder whether I can read something to my distinguished colleague. This is what the President of the United States has said. I read now from the Presidential document for the week ending Friday, February 16, 1979, put out by the White House, the administration of Jimmy Carter, an interview with the President. This is what the President said about this issue, and I quote directly:

There's nothing to prohibit a future President or a future Congress, if we feel that Taiwan is unnecessarily endangered, from interposing the American Pacific Fleet between the island and the Mainland. And

there's certainly nothing to prevent a future President or Congress from even going to war, if they choose, to protect the people of Taiwan, or to protect any other people in the country [world] that we look on with favor. So, we still have complete flexibility to deal with that kind of conjectural possibility if we choose.

When the President expressed himself forthrightly as to what options were available to the people of the United States, I did not hear the People's Republic of China say that we had gone so far that we had jeopardized this relationship. Not at all.

We simply want to change a couple of words. The words "grave concern," history has demonstrated, send one kind of signal—of inaction, wringing our hands, and doing nothing. We want to send the right kind of signal. It is not put in the strong terms that the President used.

The Senator from Illinois used words so moderate that the distinguished Senator from North Carolina feels that it is the absolute minimum we can do. We simply identify a peaceful resolution of the Taiwan issue as in our security interests.

The Senator from Illinois stated this in open testimony at the Foreign Relations Committee hearings, and the original wording of the distinguished Senator from New York was even stronger. On reflection, he felt that he should back off from that. I have many times commended him and Senator Church for taking the initiative, the congressional initiative, and going much further than the administration had originally thought acceptable. The administration will thank us some day, as they will for the congressional position with respect to the Panama Canal.

When the distinguished Senator says, "When are we going to start acting like Americans?" we had better start today. The whole process of leadership is eroding. John Connally knows that; Texas knows it; America knows it.

We had better start acting like Americans, unequivocally stating what we think is in our security interests and sending unmistakable signals as to what we might consider necessary. All options are open as to how we would act. The whole range is available.

The Senator from Illinois is quite willing to have a degree of ambiguity there, because it is in our interest to have it vague, as long as the language is strong enough to convey that we would consider taking action.

We cannot leave Taiwan out of that perimeter of security interests. When the President of the United States says that the option is open to send our fleet right in those straits, the Congress should be free to make a strong statement as well.

If we just say "grave concern," we are not sending that signal. We are not reflecting what the President has said forthrightly. We are not reflecting at all what I consider to be the mood of the Congress of the United States, particularly the Senate.

I thank my distinguished colleague for yielding. Is that what the Senator had in mind when he said, "When are we going to begin acting like Americans?"

Mr. BIDEN. Mr. President, will the Senator from North Carolina yield for 30 seconds?

Mr. HELMS. I yield.

Mr. BIDEN. I suggest that America will start acting like Americans want it to act when we start to act in our self-interest and stop engaging in hyperbole which is a breast-beating exercise in machismo. I suggest that when we start acting in our self-interest, we will be acting like Americans.

Mr. HELMS. Mr. President, I never have heard the Senator from Illinois speak more eloquently. I commend him.

I say to the Senator that I went to one of the hotels on Tuesday evening to attend the annual dinner of the Veterans of Foreign Wars. Each year, the VFW has an oratorical contest, and there is a winner from each State. The winner this year was a young lady from Illinois, and she sounded almost like the distinguished Senator from Illinois in her presentation.

The last thing she said was:

Remember that the last four letters of "American" are l-c-a-n—I can.

I think this is what the Senator from Illinois is talking about.

But let us speak in a bipartisan spirit. I recall John Kennedy in the confrontation with respect to Soviet missiles in Cuba. He stood eyeball to eyeball, and in effect he said, "I can and we will"; and the Soviets backed off.

Here we are haggling over the mildest sort of change in the language. I say this with no disrespect to the distinguished Senator from New York, my friend, or to the distinguished chairman of the committee, Mr. CHURCH. I simply think that the language of the Senator from Illinois is the absolute minimum we should do in connection with our friends and allies in Taiwan.

Reference was made yesterday and just a few moments ago to the effect that Taiwan had insisted that there be one China and that Taiwan be that one China, while Peking was insisting the same thing on the other side. That simply is not so, Mr. President. I read into the Record yesterday the history of Taiwan's position on that: An article by a distinguished professor at the University of Maryland, Hungdah Chiu, who reviewed, item by item and year by year, the position of the Republic of China (Taiwan), showing that Taiwan had the position of one China with two governments.

Anyone who wants to reject that in order to be consistent has to say "Oh, well, you cannot have two Governments of Korea or two Governments of Germany." I do not think any Senator is going to seriously suggest that.

But at least let us be fair to Taiwan in what we say in terms of historical fact. I do not think Taiwan has gotten a fair shake.

Mr. President, I issue the invitation again to any Senator who wants to see a document marked "Secret" by the Pentagon, which I have in my hand here. I will not divulge it to the media; but with any Senator, who doubts the accuracy of what I have said about General Jones' testimony with respect to the capability of the People's Republic

of China to blockade Taiwan, I will be glad to share this secret document. I am not going to say what it says but it is marked here and on several other places. It is marked to show exactly what the Pentagon said before the President of the United States in secret, and I use these words advisedly, sold Taiwan down the river.

That is why the Senator from North Carolina feels so strongly about this. We get doubletalk.

We got doubletalk on the Panama Canal. Last year I heard one thing in my office from certain military officers, and then the same officers would appear in public before a committee and they would couch their language so carefully to give the opposite impression. I remember one of our distinguished colleagues became furious with me when I suggested that this was happening.

It has happened again here. Everything that the Pentagon drafted for its own edification with respect to this matter shows that concern about the capability of Peking, and now we are told, "Oh, no, they don't have capability to blockade Taiwan."

(Mr. FORD assumed the chair.)

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. HELMS. I am delighted to yield to my friend.

Mr. GOLDWATER. It is not that I want to dispute the integrity of my good friend General Jones, but to point out that men in uniform occasionally can be inconsistent. Does the Senator remember General Jones about 2 years ago stating that we really did not need the B-1? And now he says that we need another penetrating bomber? That is in a matter of a year or a year and a half.

I also ask the Senator another question I think that has a bearing on this, because I believe the Senator from Delaware made an approach to it. Why should we have an interest in Taiwan that would require the kind of language that the Senator from Illinois has proposed and which the Senate has obviously agreed to? I do not think that was discussed in the Foreign Relations Committee, although I am not a member of that committee as the Senator is. It is something that Americans forget that our central point of foreign interest in this country for about 101 or 102 years has been the Pacific, not Europe, not South America, not Africa, but the periphery of the Pacific. We bought Alaska in 1867. We acquired Hawaii a year or year and a half later. Why? Because those men over 100 years ago had the commonsense to realize that Europe even then was pretty much through as a developing continent or a developing nation. I suggest that when any country reaches its frontiers, reaches its boundaries it can only recede and go backward, and that is what Europe had started to do then.

So we moved into the Pacific. We recognized then that if there were going to be a part of this world that in the lifetime of our Republic, an extended one hopefully, would become important it would be those countries around the Pacific, and that has proven true. The great

shining spots of the economy of the world are not in Europe. They are around the Pacific. They are the countries that are developing. They are the countries that are contributing vast amounts of money in helping us and helping themselves.

And so the question always intrigues me when someone says what is so important about the Pacific and about Taiwan?

Let us take a look at it: Here we have made a deal with the Republic of China, even though this same body last September passed, without any dissenting vote, that the President of the United States should come to us before we did anything about stabbing Taiwan in the back. That is the way I put it. I think the Senator from North Carolina expressed it in another way. He did not do it.

Now we have given a hand up to the Red Chinese. I will never know why a man who has devoted his life time, supposedly, to human rights would want to crawl in bed with an organization that murdered 50 million people. I think that is part of what the Senator is saying about being an American.

Mr. HELMS. That is it exactly. That is a minimum of 50 million, I say to the Senator.

Mr. GOLDWATER. All right. I want to get back to this subject of the Pacific to try to explain why Taiwan is so dog-gone important to us, the United States of America.

We built one of the finest airbases on Taiwan that has ever been built in this world. It will take the weight of any aircraft yet built and any aircraft that we are going to build in the foreseeable future. Taiwan has two good ports, one excellent port on the southern tip, that can handle the ships of our fleet and the ships also, I might say, of the Soviet fleet.

Let us say that we did not have this kind of language that the Senator from Illinois has put in. Let us say that Taiwan is sort of "we are not going to get any help from our old friends in the United States. We better take another look at the Soviet Union," and they say to the Soviets, "We are interested in trade with you always but we would like you to consider the possible use of our harbors, the possible use of this beautiful airbase for protection purposes."

I happen to have been all through the Island of Quemoy. I have been all over that area. I have flown over it. I have been through it. I have to say I would hate to be the commanding general that is given the order to take Quemoy. I think I would ask for leave and relaxation some place, but that is beside the point.

Once the Soviets move in there, and they are liable to do it if we do not make this language pretty strong, they might go into Camranh Bay and like the secret document the Senator has, I cannot divulge any more than they might go into Camh Ran Bay. If the Senator asks me sometime I will tell him a little more, but I cannot say it here.

What is next? Singapore. Where is the Pacific? Gone. Every country in the Pacific and the perimeter of the Pacific depends on the Straits of Malacca.



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Now let us move over there. People say why are we all excited about the fall of Afghanistan and the revolution, so-called, in Iran? I have known the shah for many, many years, and I remember asking him, "Why do you want to buy all these helicopters in a country that borders on Russia that now has over 3,000 of them?" He said, "I am not worried about Russia. I am worried about the day Afghanistan falls," and he says, "Mark my word, it is going to fall, and when it falls it will fall from Soviet influence," and that gives them an open door across that vast desert of western Pakistan, and I know something about it. I used to fly over that in World War II, and there is nothing out there, nothing to stop the Russians from building railroads, highways, down to the Indian Ocean, which they have been wanting to do all of their history.

Now they are going to do it. They are going to circumvent the former Straits of Iran. They are going to go through Afghanistan which is now theirs for the asking. They are going to go across Pakistan whether Pakistan likes it or not, and they cannot do much about it. And they will establish ports on the Indian Ocean.

The distinguished Senator from Illinois has described what has been going on in the Horn of Africa. We have lost that through our stupidity and our weakness. And he said, "When are we going to act like Americans?" When we get a little guts right here?

Mr. HELMS. Right.

Mr. GOLDWATER. That is when we are going to start.

Now what happens when the Russians own the Indian Ocean, which I happen to think is the strategic focal point of the whole world today?

We have not done much about Diego Garcia. We sat in here and argued about it, a little old atoll about 12 miles long; we want to spend enough money to deepen the harbor. We do not have to depend on Subic Bay which is 4,000 miles away. We cannot have a place out in the middle of the ocean where we can put ships and put aircraft.

But we have not done much about it. What we are talking about now is the connection of the Indian Ocean with the Pacific through the Strait of Malacca.

When you ask what importance is that—and we are getting now to the real nub of it—the Strait of Malacca is a very narrow strait, it is a very shallow strait. A couple of tankers strategically sunk in that strait could stop traffic through it. This would mean oil would have to go either about 7,500 miles further or we would see the stoppage of all oil from the Middle East to our friends around the Pacific.

So we say—friends in this organization I have heard them say, "Why are we interested in the Pacific? Why do we need language like the language of the Senator from Illinois? Why do we have to put something in this bill that we are talking about," which, I have to say, is a lot better than we started off with, and I intend to vote for it, but I will vote for it with a much better conscience if we have the language that Senator

Percy proposes in it. We have got to give this world some indication that we are not going to sit over here and back away from everything that is done to us.

When the distinguished Senator from Idaho got up I could not think of a better argument for the proposal of the Senator from Illinois than the fact that he said we are making the Red Chinese mad. I do not care if we, and I do not give a damn if we, make them mad. I would like to make them real mad. It is when they change their spots that I might change mine a little bit.

I just want to thank the Senator for allowing me to ask that long question. I think it is what he expected of me; is that not right?

Mr. HELMS. I am delighted, and I appreciate the Senator's reply, as I always do. He is a very courageous man who has stood fast on his principles, and he knows of my support.

Mr. President, I am not going to take much more time. I just want to say again if any Senator has any doubt that the administration was working and planning—and I quote the Senator's words—"to sell out Taiwan," even during the closing days of the last session when this Senate and this House of Representatives were voting almost unanimously for the Dole amendment. I think there were four votes against it over in the House and none in the Senate—all anyone needs to do is to look at this document and they will see that the administration was making plans to sell out Taiwan, over the reservations and the concerns, of the Joint Chiefs of Staff, about the capability of the People's Republic of China, which I prefer to call Communist China, to throttle Taiwan.

The point is, Mr. President, that we cannot unscramble an egg, and yet that is what we are trying to do here. I know it must appear to some that the Senator from North Carolina is being a little heavyhanded with his friend from New York (Mr. JAVITS) and his friend from Idaho (Mr. CHURCH). But that is not my intent. I know they did the best they could with what they had. But the problem is you cannot make a silk purse out of a sow's ear, and my feeling is we ought to acknowledge, as many have on both sides of the aisle, that we have been had on this proposition. Therefore we ought to strengthen the security section, at the minimum, to what the Senator from Illinois proposes and, for this Senator's part, I will be willing to let her go, as the saying is.

But if we are going to reject even such a modest change as proposed by the Senator from Illinois, then I think perhaps we ought to debate this thing for a pretty good while, and we ought to vote and vote and vote on some amendments so that we can properly ventilate it.

This I do not want to do. But if the State Department wants to get this over with, let them say, "OK, we will live with the Percy amendment." I guarantee you that the Senator from North Carolina will cooperate with anybody in shutting this thing down.

But there has been too much said about Taiwan that is not so. There has been so much done to Taiwan which

should never have been done that I, in good conscience, as just one Senator, cannot keep silent. I love nothing better than comity. I have great love and respect for my colleagues, even those with whom I disagree with most strongly.

But we have come to the place where right is right, and as that little girl from Illinois said, the laws four letters of "American" are "I can." This Senate can, and this Senate should, and I hope this Senate will.

I yield to my friend from—

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. HUMPHREY. Mr. President, I believe the Senator yielded to me.

The PRESIDING OFFICER. Does the Senator from North Carolina yield?

Mr. HELMS. I yield to the Senator from New Hampshire.

The PRESIDING OFFICER. Does he yield for a question or does he yield the floor?

Mr. HELMS. I will find that out when I find it out. The Senator asked me if I would yield and I said, yes.

The PRESIDING OFFICER. Yield for a question?

Mr. HELMS. Is the Chair going to impose that strict a rule?

The PRESIDING OFFICER. Well, there have been several Senators standing wanting recognition. The Senator attempted to yield the floor. If the Senator yielded for a question—

Mr. HELMS. I believe that the RECORD will show that I was attempting to yield to my friend from New Hampshire. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I yield to the Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I want to wholeheartedly associate myself with the amendment offered by the Senator from Illinois, and the fine remarks buttressing those of the Senator from Illinois offered by the Senator from North Carolina, the Senator from Arizona, the Senator from California, and others.

I find it incredibly ironic that at a time when the United States of America has in force a mutual defense treaty with the Republic of China, we should be quibbling so about the security section of the Taiwan enabling bill. To be perfectly honest, I would like to see the security section made even stronger than has been proposed by the Senator from Illinois, with all due respect to him, but perhaps it is the best we can do. I would like to see some honor put back in that section.

In my opinion, all that is being attempted here is to firm up some wobbly gums a little bit; to firm up those wobbly gums sufficiently so that in the future we cannot so readily speak out of both sides of our mouth on this sort of issue.

I think the fact that we are today quib-

bling about the security section of the Taiwan enabling bill, on the one hand, while on the other we have in force a mutual defense treaty, indicates that some fundamental change has taken place in the relationship between the United States and the Republic of China, and of course, indeed, a fundamental change has taken place. Indeed, a fundamental change is embodied in S. 245.

The very essence of S. 245, Mr. President, is the tacit acknowledgement by the Senate and by the United States of America of the contention of the People's Republic of China that Taiwan is but a rebellious province of the PRC.

I reject that, and I hope a majority of the Members of this body will reject that dishonest contention. The People's Republic of China has never ruled Taiwan. The 17 million people on Taiwan are free, and they want to remain free. They do not want to be governed by the Communist Government of the People's Republic of China.

Why can we not aid them in that desire a little bit? A couple of weeks ago President Carter, in his speech at Georgia Tech, made four main points, one of which was this: "We shall stand by our friends."

Well, let us do it. Let us put into practice what we say. We have suffered a terrible loss in respect, in credibility in this world, in the last several weeks and the last several years, and we will continue to suffer that loss as long as we continue to act in this perfidious, cowardly, stupid manner.

If we acknowledge to the People's Republic of China that indeed they own Taiwan, it is only a matter of time before they attempt to take what we have told them they own, by one means or another. I happen to believe that the most likely course of action by the Communists will be an economic boycott of the Republic of China, and I am supporting some legislation in an amendment which I understand will be introduced before this discussion is over that will at least help prevent that kind of economic boycott.

But at the same time, while I consider that to be the main threat, I do not for a minute underestimate the potential for direct military action against Taiwan by the People's Republic. Why should they hesitate to do that? Did they hesitate to roll their army into Vietnam? Not for a moment did they hesitate, even at a very crucial time in the involvement of the new relationship between the United States and the People's Republic of China. They did not hesitate a moment; and to my way of thinking they would not hesitate a moment, if they thought they could get away with it, from direct aggression against Taiwan.

It has been said in this Chamber today that the People's Republic of China does not have the capability, and will not have for perhaps 5 years, of engaging in a waterborne invasion of Taiwan. Perhaps that is so, but I am not in the least comforted by that, because 5 years goes by very quickly. And at least they do have today the capability of blockading Taiwan by submarines, and that would be very devastating for Taiwan, and would, in my opinion, call for the United States

to interpose its naval forces to prevent that.

In my opinion, the People's Republic of China will show no hesitation, if it thinks it can get away with it, in engaging in military aggression against Taiwan.

In today's New York Times there is an article which I should like to read, to make it a part of the Record, about what are perhaps the first, certainly early Chinese overtures to this country to provide military weapons to the People's Republic of China. Not incidentally, I have an amendment which I hope to offer to S. 245 before the discussion is closed which will make it impossible for the People's Republic of China to obtain military materiel from this country. After all, we do not sell it to the Soviet Union; we do not sell it to any of the members of the Warsaw Pact countries; and we should not, if we have any sense at all left—and I am not sure we have, frankly—sell it to the People's Republic of China.

Some people argue that we ought to build up the PRC as a counterpoise to the Soviet Union; but let us remember that 20 years ago the U.S.S.R. and the PRC were fast friends. Twenty years or 10 years from now they may be fast friends again; and I hope, for the sake of the future of this country, we do not build up a second Communist power.

The New York Times article, under the heading "China Showing Interest in Buying U.S. War Planes," written by Fox Butterfield, reads as follows:

HONG KONG, March 7.—China has quietly expressed interest in buying American military planes and associated technology, and may make a formal request to Washington within a few months, knowledgeable sources in the aircraft industry have disclosed.

Such an overture would run counter to the policy of the Carter Administration to refrain from selling arms to either the Soviet Union or China, in order to avoid the appearance of favoring one over the other. But the Administration has said it would not object to allies of the United States making such sales to China, and Peking is negotiating with Britain to buy the Harrier jet fighter.

That, parenthetically, Mr. President, for those who are not aware of it, and I suspect most in this room are, is a vertical takeoff fighter which requires only the shortest of runways, one whose bases could be changed on very short notice—for instance, to move them closer to the coastline of the People's Republic of China.

Resuming the quotation:

According to an aviation industry representative who recently visited China, the Chinese have shown a particular interest in buying the Lockheed C-130, a versatile four-engine military transport, and the Lockheed P-3C antisubmarine patrol plane. The Chinese also reportedly expressed interest in advanced electronic equipment produced by McDonnell Douglas, which makes the new F-15 Eagle fighter and the highly effective but older F-1 Phantom.

Last month Fang Yi, China's Deputy Prime Minister for science and technology, visited the headquarters of Lockheed and McDonnell Douglas, ostensibly—

Ostensibly, I emphasize—

to inspect their commercial airliners, the Lockheed Tristar and the McDonnell Douglas

DC-9 and DC-10. But he was reported to be surprisingly well informed about the companies' military planes.

Representatives of the two manufacturers have made several trips to China in recent months to discuss sales of commercial airliners, and during one visit, a Chinese official asked a Lockheed representative how to negotiate with the Pentagon for a military order. "We told them they could buy the L-100, the civilian version of the C-130," the American said, "but they indicated they would like the C-130 itself."

He said the Chinese were aware of President Carter's prohibition on arms sales to Peking but seemed to hope that the normalization of relations between the United States and China might lead to a relaxation of the ban.

Another possible motive behind a Chinese request to buy United States warplanes is that even if Washington was to turn it down, the overture could help give Moscow the impression that there was a growing Chinese-American alliance. The recent trip to the United States by Deng Xiaoping, China's senior Deputy Prime Minister, and his stop in Tokyo to brief the Japanese on his visit, may also have been designed with this purpose in mind.

Whatever Peking's motivation, a direct request to buy American military aircraft could prove very embarrassing to President Carter, particularly after China's invasion of Vietnam.

Peking has moved slowly to buy weapons abroad and has been extremely cautious about committing its scarce foreign exchange reserves to military purchases. Analysts here, for example, say reports last fall that Peking had sought \$700 million worth of French antitank and antiaircraft missiles were premature and that no contracts had been signed.

One reason for delays is that the modernization of China's antiquated armed forces has been given the lowest priority in Peking's ambitious economic development program.

This could change, however, because of China's experience in Vietnam, where Chinese commanders may have discovered they were at a disadvantage because they lacked the modern field radios, fighter planes and missiles the Vietnamese had.

China has had considerable difficulty developing its own aircraft industry. Most of its 5,000 planes are outdated Russian MIG-17's, plus a few MIG-21's. There is also a Chinese-built version of the MIG-21 called the Shenyang F-9, but Peking has reportedly had trouble keeping the plane in operation because of faulty design.

I commend the Senator from Illinois for trying to firm up the security section of the Taiwan enabling bill. To my way of thinking, there is little to allay our fears that the Chinese on the mainland will not continue in the future in their military adventurism such as they have shown in recent weeks. As the Senator from Illinois has said, we wish to arrest the decline of the United States, the decline in our respect and credibility, the decline in our ability to affect events. We are going to have to make it clear where we stand in this world.

Mr. President, I wish we could erect on that wall right behind you a giant map of the world with a light behind each country, each nation, and switch off one by one the light behind each country which has disappeared into the darkness of communism since World War II. I think if we could do that it would be so dramatic that there would be no question about whether or not the Senate would agree to the amendment offered by the Senator from Illinois.

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Things are going to hell in a handbasket. They really and truly are. We are going to have to take a stand in the world. We are going to have to exert some leadership if we really care about passing on to our children the kind of world we want to see them inherit.

Russian Communists, like nature itself, abhor a vacuum. Every place we have allowed a vacuum to form, Russians move to fill it preceded, perhaps, by the Cubans, but they come nonetheless.

The future of America is at stake—not just the future of Tawian but the future of America.

I invite my colleagues in this body to support the Senator from Illinois in his attempt to modestly stiffen, modestly strengthen, the security section of this bill which, in any case, will fall far short of the mutual defense treaty which the President proposes unilaterally to terminate at the end of this year, and in which I hope he will fail.

**THE PRESIDING OFFICER.** The Senator from Massachusetts.

**Mr. TSONGAS.** Thank you, Mr. President.

I would like to present perhaps a different New England view or position. The Senator from Illinois said it was time that we began to act like Americans. I would like to give my personal perspective on that issue.

In the summer of 1964 I was coming back from my service in the Peace Corps to go to law school. I thought I had spent those 2 years acting like an American who recognizes the world that exists, not the world that we cast in our own rhetoric.

In that same summer, in this same Chamber, the U.S. Senate voted the Tonkin Gulf resolution. As a result of that action, 55,000 Americans, most of them my age, are no longer alive.

In my naivete at that point I could not understand how that was possible. I sat here and listened to the heady jingoism or listened to the dynamics that result from power, and I understand why 15 years ago we moved in that direction.

If I do anything in this body, Mr. President, it will be to try to make this body recognize that the world has changed. You can do what you want with all your rhetoric, but it is the next generation that will pay that price.

There is one basic foreign policy flaw in this Senate. That is that this body as a whole views the world in East-West terms. There are only two parts of the world: Those who are for us and those who are for them.

Whether or not that was true in the 1940's and 1950's is arguable. It is not true today. It was not true in the 1960's. There is a third world that, frankly, does not give a damn on which side of the ideological split they end up. Their major motivation is nationalism, and they did not give up colonialism from the French, the British, the Belgians, or whoever, to take on the Soviets.

If you were a resident of those countries you would have exactly the same attitude.

But we do not recognize that. We impose our ideology on the third world. The problem with that approach is not only is

it based on an unreality, but it just does not work.

There is something so psychologically enjoyable to get up and rant and rave about this country or that country falling to the Soviets. I lived in the third world. I have seen the Soviets in the third world. They are hopelessly inept. The only way we have any viable Soviet success is totally based on the capacity of this country not to know what it is doing.

It seems to me it is about time we acted in what are the best interests of this country in not falling into the hands of the Soviets.

How is it possible when we talk about acting like Americans that we, as a supposedly advanced, educated, intelligent society, could not have recognized China for 30 years?

It is very easy. It is the same rationale that says we do not recognize Angola today. We do not learn from the past. We continue to repeat the mistakes.

How is it that we as a country that talks about human rights, dignity, and justice could have a long history of supporting leaders not based on their policies at home but based on their willingness to mouth the appropriate ideological rhetoric?

I do not know whether we are going to learn anything. I do not know whether my service here is going to advance the cause. But I would suggest that it is about time we deal with the world as it sees itself and not try to impose an American view, not only because it is right but because it works. There is the next generation whose existence and stability is dependent upon the Senate coming to that awareness.

#### ORDER VITIATING ORDER FOR SESSION TOMORROW

**Mr. ROBERT C. BYRD.** Mr. President, I hope that the Senate will reach a vote shortly, up or down, on the amendment by Mr. PERCY. I ask unanimous consent that the order for a Senate session on tomorrow be vitiated.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

#### TAIWAN ENABLING ACT

The Senate resumed consideration of the bill.

**Mr. JAVITS.** Mr. President, I do not expect to speak more than a few minutes, I might reassure the majority leader.

I must say, as one Senator, that I sat here with great satisfaction and heard our newer Members express their views. I say to them: That is what this place, gentlemen, is all about. You are here because you bring a new quality, a new freshness, a new set of ideas to liven us all up. I hope you keep it up.

Now, as to the measure that we are debating, Mr. President, I had to pinch myself to be sure I was awake. After all, none of these gentlemen invented this security provision for Taiwan. I did. When I invented it, I did not propose to do Taiwan in, I proposed to help and save Taiwan.

I am mortified, and I do not think I

did very well, frankly, that we could not get a unanimous vote in this Chamber. That is what really counts. Who is going to be terribly impressed at 47 to 45? You cannot even approve a treaty with that vote.

Let us hear all these strong words about how we Americans are going to stand up when we have a draft up here, or when we increase the defense budget 10 percent, or when we impose wage and price controls or gas rationing. That is what the world is looking at us for. You can utter all the brave words you like, you can write them in this resolution; it means absolutely nothing. It is not what we say. That has been our trouble: We have said too much; we have not done anything.

Sure, this provision is more modest than it should be, but it was made more modest in order to get the greatest consensus behind a unilateral policy which said, "Listen, People's Republic of China, we are recognizing you, but lay off Taiwan."

I am satisfied that these words say it, "Lay off Taiwan."

Why do I say that? I am not given to asking you to take my word for anything. I should like to show very briefly why.

The things which are not in my formulation which are in here now seemed to me to far preponderate over this concatenation of words on whether we say "a threat to the peace and security of the Western Pacific area and of grave concern to the United States" or whether we say the same thing, "a threat to the peace and security of the Western Pacific area and to the security interests of the United States."

I wrote those words originally. But when you look at what we gain, when we want to say to the People's Republic of China, hands off Taiwan, this is what we gain:

We gain, one, an absolute condition that we are recognizing the People's Republic based upon the fact that it will not seek to resolve the Taiwan issue by force. That is the real guts of this thing. Right now, for the next years, that is what they are more afraid of than they are that we will interpose our Navy between Taiwan and the mainland. We did that before under General Eisenhower, and we did not have such a resolution at that time.

Second: We gain what to me is the most important part of this thing. That is, the naked force, the naked boycott, the naked blockade is not nearly as important to me as what will, and these Chinese are very clever, what will jeopardize the security or the social or economic system of the people of Taiwan. That is what we are seeking to preserve. That is in here now. It was not in here before.

Finally, we put the word, a very important word, in the self-defense capability, which we would equip. That is doing things. The word is "sufficient." That is that they have enough to defend themselves, whatever it took. That to me also, in security terms, was a very important word.

Finally, and very importantly, if the Members will look on page 15, lines 1 to 4, we used the very same provisions which are in the NATO Treaty.

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The United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

Now, frankly, as I say, if I knew we were going to get into this hassle, with such close votes, I really would have been appalled before I drafted and dealt with this thing. It has happened. We are here. We have the result. But the key to what we shall do will depend on what we have in the Pacific. We agree here in this provision to maintain our capacity to resist any resort to force, with what we have in the Pacific and our will to use it. We sent a carrier from Subic Bay to the Persian Gulf and we stopped it. Now, I believe—I do not know, but I believe we have sent a carrier to off the Yemen coast and we have not stopped it. That is what really counts.

So I hope, and the message we send is to the people of the United States—they are the people who have to back what will make this really effective, whatever form of words we use. Because I hoped that we could get the greatest amount of consensus upon this provision as it was and because of the very sharp division which has developed here over these words, I felt it my duty to explain why I considered the whole provision far more important than these words. I hope very much that we do sustain the language of the agreement that we have arrived at with the other side and that that is a substantial vote. That is the best way to give notice, especially if it has behind it our will to implement what we are writing.

Mr. ROBERT C. BYRD. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. PERCY. Mr. President, I should like to respond to the ranking minority member of the Committee on Foreign Relations and ask a question of the chairman.

Senator JAVITS indicated that the resolution is more modest than it should be. I agree with that. I have fully taken into account, however, the overall job that was done and have persistently and steadily expressed appreciation to both of my colleagues on the Foreign Relations Committee for what they did accomplish. It was my feeling, however, that, good as that job was, we could make it just a little bit better.

The Senator from Illinois, for better than 12 years, has seen the Senator from New York take his pencil and carefully change a couple of words and get quick agreement on it. The Senator from Illinois felt there should not be much dispute over this particular point.

Mr. CHURCH. May I just say to the Senator that it is just a question of judgment as to how close we have come to the brink. I think the committee language brought us right to the brink. If you stand right at the brink of the Grand Canyon, you get a magnificent view. If you take one more step, you are in trouble. This is the difference between our two positions. We disagree on how close we have approached the brink.

Mr. PERCY. I appreciate that. It is a question of judgment. It is the judgment

of the Senator from Illinois that we can just inch forward a little bit and get a clearer picture of the whole canyon, not fall over the precipice, and not jeopardize anything.

I persistently and steadily worked toward normalization and will continue to do so. I have a deep respect for many of the accomplishments of China and certainly the commonality of interests that we share in certain areas of security important to the United States.

The question the Senator from Illinois would like to ask the chairman of the Foreign Relations Committee—

Mr. SARBANES. Will the Senator yield on the point he just made?

Mr. PERCY. Yes, of course.

Mr. SARBANES. I think the difference with respect to the judgment call to which the Senator from Illinois and the Senator from Illinois referred earlier, is that if the Senator from Illinois is wrong, it is not within our power to control the situation. If his language goes too far, normalization will have been lost. On the other hand, the language in the committee bill and the assurances that the United States is making thereunder and the action we will take are within our control. We can act on the basis of the committee's language without the amendment by the Senator from Illinois, in order to meet our commitments with respect to the people on Taiwan. That is a critical difference. There is no gamble, from our perspective, with the committee's language, because how we act pursuant to it is within our control and we do not need the Senator's proposed amendment to act differently.

With the Senator's amendment, there is a gamble, because the reaction to it as it may affect normalization is not within our control.

That is the essential difference in the judgment call being made here on the floor of the Senate with respect to the Senator's amendment.

Mr. PERCY. This amendment was offered and fully discussed publicly in committee.

After the amendment was defeated, I discussed it with two members of the Chinese diplomatic mission to see whether there was any adverse reaction. I said that we were trying to express in the language of this amendment exactly what we had been saying to the Vice Premier when he visited the Senate and was in the United States.

There has been ample time for the Chinese mission, now the members of the Chinese Embassy, to contact Members of the Senate to express their concern about this and say why they feel we should not be expressing this point of view and whether or not it would jeopardize normalization of relations.

The Senator from Illinois to this date has not had any direct indication, nor has any spokesman for the administration been able to express anything other than their own concerns about what might possibly be a reaction.

But, as I have said, the People's Republic of China has not hesitated to express itself forthrightly and honestly and they have taken their chances on jeopardizing our relationship and it was their

judgment that plain speaking would not harm our relations.

So far, everything they have done, whether it is an invasion of Vietnam or whether it is a criticism of the policy of the U.S. Government, with respect to Iran, has had some degree of risk, but they were honest and forthright and laid it on the line.

I think most of us had respect for them doing that. I would just hope they would be fair enough to respect us for being frank. In the Senator from Illinois' relationship with them I have found them eminently fair.

We have simply agreed to disagree on some issues, and in interpretation of certain events transpiring.

All the amendment does is simply state what has already been stated by many Members of Congress and much more strongly by the President of the United States in his interviews with the press. It is certainly more forcefully and strongly stated by language that has been developed by others in the Senate of the United States.

The language offered in this amendment is, as one Member of the Senate said, the mildest language, in his judgment, we could adopt to honestly express our views.

The Senator from Illinois understands there was one other Senator, my distinguished colleague from Iowa, who might wish to speak at this time. If so, I am happy to yield to the distinguished Senator whatever time he feels desirable, taking into account that there is a desire now to get the vote underway.

The PRESIDING OFFICER. Is the Senator from Illinois yielding the floor?

Mr. PERCY. I am happy to.

The PRESIDING OFFICER. The Senator from Iowa is recognized in his own right.

Mr. JEPSEN. I thank the Chair.

Mr. President, I have heard the distinguished Senator from Idaho say today, "What kind of a message are we sending?"

I have heard the distinguished Senator from Maryland say, "We are taking a chance by changing two words."

I have one question. We are taking a chance with what and with whom? What kind of a chance are we taking when Secretary Blumenthal was in Peking telling the whole world China was an aggressor shortly after our recognition?

I think that is of somewhat greater magnitude—we talk about taking a chance—something more than what we are talking about here with strengthening a couple of words.

I do not think we should say the Senate of the United States is fouling things up. The administration seems to have an exclusive right on that.

A friend of mine went out to the Theodore Roosevelt Memorial Island the other day to enjoy some winter solitude. It is one of his favorite places in Washington.

It is the island in the middle of the Potomac across from the Kennedy Center. Dedicated as a wildlife refuge, it features a huge, concrete plaza dominated by an enormous statue of Teddy, his arm raised in exclamation, flanked



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by giant tablets bearing inscriptions of Roosevelt quotations.

Anyway, when he was out there, he was sitting there alone, and suddenly a high-pitched and rasping voice said, "Young man, you there."

He looked up. It was the statue that was talking. The statue of Teddy Roosevelt.

Teddy said:

Don't be alarmed, I'm perfectly harmless, I assure you. I simply get lonely from time to time and need someone to talk to. I get particularly hungry for news of the outside world. Tell me, what's going on out there? I've been out of touch for months.

My friend said:

Well, let's see, last week President Carter went to Mexico on a state visit and was insulted by the President of Mexico, our embassy was captured by leftist rebels and the staff had to be rescued by supporters of a right wing religious nut, and our ambassador to Afghanistan was kidnapped and murdered.

Teddy Roosevelt said:

Thunderation! Where did the President send the fleet first? It would be a difficult choice. I suppose I'd start with Mexico. An affront to the President is an attack on the American flag. Is that what he did? Did he send the fleet steaming into Vera Cruz, or did he just send a punitive expedition over the border?

My friend said:

Neither. He answered the insult by telling an assembled luncheon gathering about a case of diarrhea he once had while in Mexico.

Teddy said:

At at luncheon, you say? Well, not the kind of revenge I'd have taken but it's something, anyway. I'll wager he took stronger action against the cheeky beggars who took over our embassy in Iran. Send in a company of marines to occupy the country, did he? Hang the offenders in a public square as an example to others?

No, he sent a sharp note to the Soviet Union, saying that if it didn't stop stirring up the natives against us, we were going to get mad.

Teddy said:

Am I missing something? Is the Marine Corps ill? What did he do about our murdered ambassador, send a telegram of apology to the heathen who did it?

He said:

No. He expressed dismay and surprise that the kidnapping was handled so badly by Afghanistani authorities.

Well, he said:

I know I always advocated talking softly, but I don't understand what is going on with this situation.

My friend said:

Well, he's in a difficult position. We need oil from most of these countries and if we're not nice to them they won't sell it to us, we'll have to give up our lifestyle of snowmobiles and campers and two cars to a family and one person to a car.

He said:

That is certainly a sad commentary on what's happened to the country. If that had been the attitude when I was President, we wouldn't own the Panama Canal today.

My friend said:

Mr. Roosevelt, sir, can you sit down? I've got something to tell you.

I say to the Members of the Senate that there is a message today that is bouncing off the mountain tops, that is echoing from the valleys and ringing from the hearts of all freedom loving people throughout the world. They are saying, "America, where are you?"

Recently, leaders of the European nations met in Guadalupe. According to this administration and press reports, everything seemed rosy. But then the leader of France went back and disassociated himself from American policies—the policy of now you see it, now you do not.

In an interview last Friday, I was told by representatives of the German Bundestag that they were worried that "the United States is going to leave us high and dry and directly facing the hordes of Russian military might all by ourselves"; that this was causing the German Government to begin to think about making book with Russia. But the simple fact of life is that America no longer has the conviction and the will to stand up to those of the left in the world, to those who, through acts of terror and intimidation, are bent on destroying the ability and the will of freedom-loving nations to stand firm against the worldwide conflict being practiced by those who would like to see America on her knees.

I think this amendment we are talking about today is really a drop in the bucket, but at least it is something. It is a ray of hope. It is a glimmer. It is a response to the call that many countries and freedom-loving people around the world are expressing, and that is, "America, where are you?"

I hope that this distinguished body—which I understand will vote on this matter in a few moments—in its wisdom will vote "aye" on this amendment. It will be the first indication in some months that there are people in this country, 100 Members in the Senate, who do represent collectively all the people of the United States of America, who are hungering for leadership, who are desirous that we do take a stand and tell the world: "Yes, we accept the responsibility of being the leaders of freedom around the world. We accept the responsibility of being the Nation that must keep the peace."

I assure Senators that if we do not assume that and accept and continue in that role, there will not be peace and there will not be freedom, and some day, perhaps, there will not be an America. So I am going to vote for this.

I thank the Senator from Illinois for yielding time.

Mr. JACKSON. Vote.

Mr. PERCY addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from Illinois yield?

Mr. PERCY. I yield.

Mr. ROBERT C. BYRD. Will the Senator let the Senate come to a vote on his amendment? Several Senators have plane reservations and need to leave. If we could vote now, it would be my plan, after Senator HOLLINGS calls up an amendment which he says will be ac-

cepted, to go over until Monday—if the Senator will let us vote now.

Mr. PERCY. The Senator feels that a vote could come in 5 minutes. I have one question to ask the chairman.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur, up or down, on the amendment within 5 minutes.

Mr. PERCY. Better say 10 minutes.

Mr. ROBERT C. BYRD. Not later than 10 minutes.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection? The Chair hears none, and it is so ordered.

Mr. PERCY. Mr. President, the question I wanted to ask the distinguished chairman relates really to a comment that he made earlier. I have made a notation about the comment—that you can understand the politics of this.

I hope there is no implication in that that politics is involved. The Senator from Illinois, first of all, deeply believes that, whenever possible, there should be a bipartisan foreign policy and will adhere in every conceivable way to trying to leave partisanship out of policy. It is confusing enough without partisanship.

Second, I have just checked to see whether we have received much mail on this. We have not received as much as we got in an hour on the Panama Canal. I cannot recall when anybody has spoken to me about it, except Taiwanese living in Illinois who are concerned about their rights on the island of Taiwan. As a majority, they do not have the rights they feel they should have, and they hope someone will speak up for that. We have expressed in the hearings our feelings on that issue.

Was there some implication the Senator from Illinois did not get as to what

Mr. CHURCH. The Senator knows that I am aware of his role in the committee, and I have never known him not to place the national interest first. I am sure he does so in this case.

As I mentioned earlier, this is a judgment call. The Senator from Illinois would not knowingly or purposefully offer this amendment in the expectation that its approval would lead to a dissolution of the ties that now have been established between Washington and Peking.

Mr. PERCY. I thank my distinguished colleague. I value his friendship and his judgment.

If there were any political aspect to this, I must be blind, because I cannot see it. It does not seem to be an issue of great public interest, and it certainly was not during my visit to Illinois.

It is a matter of deep personal conviction that we should express ourselves, so that we gain respect by saying exactly what we mean and saying it as forthrightly and honestly and openly as other nations have. That is the concern I have.

In all the relationships that the Senator from Illinois has been able to establish through the years in business or in public life, the central core always has been the mutuality of interest. Can both sides gain by this relationship?

The term "brinkmanship" has been used: Are we on the brink of possibly go-

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ing over the precipice or losing this? For the life of me, I cannot see how we could; because, basically, from the standpoint of the United States, it is in our national interest that normalization proceed. We should have diplomatic relationships at the highest level. We should have every conceivable kind of relationship—cultural, economic, every other aspect of interrelationships between the largest nation on Earth, 900 million people, and the most powerful nation on Earth, the United States of America, economically, militarily, and we hope politically, certainly in the Mideast now, as we use our influence there to bring peace.

I believe it is in our interest to go forward with normalization and I am strongly for it. But I also believe normalization is in the interest of the People's Republic of China.

The Chinese are not going to let something go down the drain simply because they might object to our using or prefer us not to use words other than "of grave concern." I can not imagine they would permit that to endanger our entire relationship.

For them, normalization is a very good thing, because it gives them full diplomatic relations with the United States of America. It opens up to them the kind of contacts they need to advance themselves into the future. They have been open and forthright about saying that they want that technical know-how, that they want that contact between our peoples, that they want that relationship for their educational institutions. In the end, it is going to be beneficial to them. If there are benefits to the United States and to the People's Republic of China, this relationship will go forward.

All the Senator from Illinois is saying in this amendment is:

Let us honestly express our interests in a peaceful resolution of the Taiwan issue. Let us speak clearly. The administration did not get verbal commitment from the People's Republic of China that they would not use force. The Chinese have left that option open. Let us not fall to be just as forthright and clear in what we say as to how important we consider the people on Taiwan.

So it is not just a question of semantics or just a couple of words. It is an intention of a people and it is to make absolutely certain that we express how strongly we feel about this matter.

Again I commend my distinguished colleagues for the work they have done on this matter. In no sense would the Senator from Illinois, by changing a few words, try in any way to detract from the very good job they have done, in the best tradition of the U.S. Senate, in conjunction with the executive branch. They have worked out excellent language that I feel is not modified in principle at all but simply improved and somewhat strengthened and placed on the solid foundation they have built with respect to the relationship between the People's Republic of China and the United States of America.

Mr. President, I have no further comments to make, and I am ready for the vote.

• Mr. KENNEDY. Mr. President, after very careful deliberation, the commit-

tee incorporated section 114 designed to help insure the security of the people on Taiwan. As agreed by the committee, this section makes very clear the interest of the United States in the future security, prosperity, and welfare of Taiwan.

We must act to support that interest, consistent with the fundamental decision to recognize Peking as the sole legal Government of China. But we must remember that the primary assurance of Taiwan's security rests with the capability of its own people to defend themselves. It rests with the readiness of the Chinese on both sides of the Taiwan Strait to resolve their differences by peaceful means.

Senator PERCY's amendment does not add to that assurance. It runs the risk of antagonizing the People's Republic of China without increasing the security of Taiwan by one iota. It reduces our future flexibility in determining whether and to what extent our interests in Taiwan are actually jeopardized.

Moreover, the amendment suggests that our security interests in Taiwan are equivalent to our security interests in Japan, Korea, or other close allies. The Joint Chiefs of Staff differ with this view, as is clear from the committee hearings. General Jones, the Chairman of the JCS, told the committee that his concern with Senator PERCY's language is "that our security interests (in Taiwan) are less than in other areas of the Pacific or the world."

I agree with General Jones.

But more fundamentally, I believe that the committee's language represents good policy as well as a fair political compromise. Senator PERCY's amendment would be a step back from that policy and would undermine that compromise. I urge the Senate to reject this amendment.

Mr. CHURCH. Mr. President, I hope, upon reconsideration, that the Senate will reject the amendment offered by the Senator from Illinois.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from North Carolina (Mr. MORGAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

On this vote, the Senator from Nevada (Mr. CANNON) is paired with the Senator from Hawaii (Mr. INOUE).

If present and voting, the Senator from Nevada would vote "yea" and the Senator from Hawaii would vote "no."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

The VICE PRESIDENT. Will Senators please clear the well?

Are there any Senators who have not yet voted?

The result was announced—yeas 42, nays 50, as follows:

[Rollcall Vote No. 13 Leg.]

## YEAS—42

Armstrong	Hatch	Randolph
Bellmon	Hatfield	Roth
Boren	Hayakawa	Schmitt
Boschwitz	Helms	Schweiker
Byrd	Holmes	Simpson
Harry F., Jr.	Hollings	Stevens
Cochran	Humphrey	Stone
Cohen	Jepson	Thurmond
Danforth	Laxalt	Tower
DeConcini	Lugar	Wallop
Dole	McClure	Warner
Domenici	Packwood	Weicker
Durenberger	Percy	Young
Garn	Pressler	
Goldwater	Proxmire	

## NAYS—50

Baucus	Glenn	Muskie
Bayh	Hart	Nelson
Bentsen	Hefflin	Nunn
Biden	Huddleston	Pell
Bradley	Jackson	Pryor
Bumpers	Javits	Ribicoff
Burdick	Johnston	Riegle
Byrd, Robert C.	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Chiles	Leahy	Stafford
Church	Levin	Stennis
Cranston	Magnuson	Stevenson
Culver	Mathias	Stewart
Durkin	McGovern	Tsongas
Eagleton	Meicher	Williams
Exon	Metzenbaum	Zorinsky
Ford	Moynihan	

## NOT VOTING—3

Baker	Inouye	Morgan
Cannon	Long	Talmadge
Gravel	Matsunaga	

So the amendment (No. 79) was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The Senator from South Carolina. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from South Carolina yield?

Mr. STEVENS. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. BUMPERS). Senators will please retire to the cloakroom. The Senate will not resume until there is order in the Chamber. Please retire to the cloakroom to continue conversations.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from South Carolina yield to me?

Mr. HOLLINGS. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today, but Senators who may wish to call up amendments, and have voice votes thereon—some amendments will be accepted—the Senate will continue to do business until such amendments have been disposed of.

UNANIMOUS CONSENT AGREEMENT TO VOTE ON PASSAGE NO LATER THAN 5 P.M. TUESDAY, MARCH 13, 1979, AND TIME-LIMITATION AGREEMENT ON AMENDMENTS

Mr. President, I ask unanimous consent—and I have cleared this with Mr.

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HELMS and Mr. STEVENS and with other Senators—that a vote on passage of the legislation occur no later than 5 p.m. on Tuesday next, with the proviso that there be 1 hour on each of three amendments by Mr. HELMS, that time be equally divided in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 1 hour on any amendment to be equally divided in accordance with the usual form, other than the amendment by Mr. HOLLINGS which, I understand, is going to be accepted.

Mr. HOLLINGS. I hope so.

The PRESIDING OFFICER. Without objection, it is so ordered.

## UP AMENDMENT NO. 32

(Purpose: To establish the Joint Commission on Security and Cooperation in East Asia.)

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from South Carolina.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an unprinted amendment numbered 32:

At the bottom of page 22, insert the following:

## Title V—

Mr. HOLLINGS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the bottom of page 22, insert the following:

## TITLE V—JOINT COMMISSION ON SECURITY AND COOPERATION IN EAST ASIA

SEC. 501. (a) There is established a joint congressional commission known as the Joint Commission on Security and Cooperation in East Asia (hereinafter in this title referred to as the "Joint Commission") to exist for a period of three years, which period shall begin upon the date of enactment of this Act.

(b) The Joint Commission shall monitor—

- (1) the implementation of the provisions of this Act;

- (2) the operation and procedures of the Institute;

- (3) the legal and technical aspects of the continuing relationship between the United States and the people on Taiwan; and

- (4) the implementation of the policies of the United States concerning security and cooperation in East Asia.

(c)(1) The Joint Commission shall be composed of twelve members. Of the members provided for under the preceding sentence—

(A) six shall be Members of the House of Representatives to be appointed by the Speaker of the House of Representatives, four of whom shall be selected from the majority party, and two of whom shall be selected, upon the recommendation of the Minority Leader of the House of Representatives, from the minority party; and

(B) six shall be Members of the Senate to be appointed by the President pro tempore of the Senate, four of whom shall be selected, upon the recommendation of the Majority Leader of the Senate, from the majority party, and two of whom shall be selected, upon the recommendation of the Minority Leader of the Senate, from the minority party.

(2) In each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the Members of the House of Representatives selected under paragraph (1)(A) as Chairman of the Joint Commission, and the President pro tempore of the Senate shall designate one of the Members of the Senate selected under paragraph (1)(B) as Vice Chairman of the Joint Commission. In each even-numbered Congress, the President pro tempore of the Senate shall designate one of the Members of the Senate selected under paragraph (1)(B) as Chairman of the Joint Commission, and the Speaker of the House of Representatives shall designate one of the Members of the House of Representatives selected under paragraph (1)(A) as Vice Chairman of the Joint Commission.

(d)(1) Members of the Joint Commission shall serve without compensation but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Joint Commission.

(2) The Joint Commission may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

(e) The Joint Commission may, in carrying out its duties under this title, sit and act at such times and places, hold such hearings, take such testimony, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it deems necessary. Subpoenas may be issued over the signature of the Chairman of the Joint Commission or any member designated by him, and may be served by any person designated by the Chairman or such member. The Chairman of the Joint Commission, or any member designated by him, may administer oaths to any witness.

(f)(1) The Joint Commission shall prepare and transmit a semiannual report to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the President on—

(A) the progress achieved by the United States in maintaining full and unimpeded cultural, commercial, and other relations with the people on Taiwan, and

(B) the legal and technical problems arising from the maintenance of such relations, together with recommendations for legislation to resolve such problems and recommendations for strengthening such relations and for carrying out the commitment of the United States to human rights in East Asia.

(2) The Joint Commission shall provide information to Members of the House of Representatives and the Senate as requested.

(g)(1) There are authorized to be appropriated to the Joint Commission for each fiscal year and to remain available until expended, \$550,000 to assist in meeting the expenses of the Joint Commission for the purpose of carrying out the provisions of this title. Such appropriations shall be disbursed by the Secretary of the Senate on vouchers approved by the Chairman of the Joint Commission, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

(2) For each fiscal year for which an appropriation is made the Joint Commission shall submit to the Congress a report on its expenditures under such appropriation.

(3) For purposes of section 502(b) of the Mutual Security Act of 1954, the Joint Commission shall be deemed to be a joint committee of the Congress and shall be entitled

to the use of funds in accordance with the provisions of such section.

On page 23, line 1, strike out "TITLE V" and insert in lieu thereof "TITLE VI".

On page 23, line 2, strike out "Sec. 501." and insert in lieu thereof "Sec. 601.".

On page 23, line 4, strike out "Sec. 502." and insert in lieu thereof "Sec. 602.".

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the Senator. Mr. President, for the further information of Senators, the order for tomorrow has been vitiated. There will be no meeting of the Senate tomorrow. The Senate will come in at 11 o'clock on Monday.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of my amendment: The Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. DECONCINI), the Senator from Indiana (Mr. BAYH), the Senator from Oklahoma (Mr. BOREN), the Senator from Illinois (Mr. PERCY), and the Senator from Alabama (Mr. STEWART).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, this is the amendment establishing an oversight commission with respect to Taiwan.

Let me first, before we get into the debate, commend the Committee on Foreign Relations, and particularly Senators CHURCH and JAVITS, for the excellent job that they have done so far in taking a rather casual, inadequate administration bill and substantially improving it by recognizing the agencies and instrumentalities on Taiwan, by providing that when dealing with the institute, it would be dealt with as an instrumentality of the government, by providing for privileges and immunities, and by spelling out that other than peaceful means employed against Taiwan would be of great concern to the United States. On the latter, by a tie vote here on two occasions, we have expressed really the United States sense that a threat to our security would be involved.

Mr. President, with those improvements, the bill has been substantially improved. Though I do not minimize in any way the hard work done by the Foreign Relations Committee with the poor bill submitted to them, frankly, what we really are engaged in is one of the most fraudulent shams that you could possibly conceive. We could not find anywhere else a precedent for calling the government an institute and the institute a government.

We wondered about the covert activities of the CIA. They might not have worked well in Iran, but they are working extremely well right now participating in designing this covert operation. So we are saying the Government is going to work with the government in Taiwan, and it is not the Government, but it is the people, and it isn't the public, but it is our tax money—and around and around in a circle it goes. I cannot get over the very strong feeling that this is pure sham, and not in the best interests of the people of the United States. But I

am trying to be realistic in trying to work out of this situation the best we can.

We heard earlier—and I guess this is the best way to get to the point with respect to the need for a commission—in the statement of my distinguished colleague from North Carolina, of a secret report of how Taiwan could be successfully blockaded by the People's Republic of China. That has not concerned me as much as the economic squeeze and strangulation of the people by embargo or economic means—and that is far, far easier, Mr. President, than any kind of military action to blockade.

I am not minimizing in any sense the concern that Senators might have over a military blockade, but that is not really my primary concern. I had expressed this concern for several weeks when I was first briefed on the subject of Taiwan by the State Department, and then later an article appeared, written by a distinguished former ambassador and foreign service officer of the U.S. Government, Ambassador William J. Porter, and published in the *Christian Science Monitor* of January 10, 1978. I ask unanimous consent to have this piece printed in its entirety in the *Record* at this point.

There being no objection, the article was ordered to be printed in the *Record*, as follows:

[From the *Christian Science Monitor*,  
Jan. 10, 1979]

WHAT CARTER GETS UNITED STATES INTO  
(By William J. Porter)

PEOPLE'S REPUBLIC OF CHINA

Administrative Notice to Shippers—Certificates of Control and Clearance

(To ease congestion in the ports of the People's Republic of China (PRC), and to facilitate the importation and exportation of merchandise, all shippers are hereby notified that shipments to and from the PRC, including the province of Taiwan, must be accompanied by a Certificate of Control and Clearance (CCC) stating the nature of the cargo and its port of destination.

(These certificates may be obtained from the consular section of any Embassy of the PRC or at any Chinese port on the mainland.)

The thrust of this imaginary "Notice" should be clear. It is intended to bring into view sovereign authority which the Peking government may choose to assert, and which the United States is no longer in a position to dispute once the Carter administration recognized Peking's hegemony over Taiwan.

The White House has informed the public that all details of the arrangement with the PRC have been revealed—with no mention of safeguards against the possibility of such regulatory measures. There are, of course, several additional areas in which Peking may choose to exercise its sovereign authority without fear of anything but remonstrance from the Americans. The example cited above begs a specific question. Would the United States accept such PRC regulations if applied to vessels carrying defensive weapons to "the province of Taiwan" during and after the period in which the U.S.-Taiwan mutual defense treaty remains valid?

Apparently such serious possibilities were not properly considered or negotiated before the recognition of the PRC, which indicates the hasty nature of the President's decision. We are, of course, assured by those who approve the manner in which the event was manipulated that it would not be in the interest of the PRC to take such action. But such optimism is not convincing because it

presumes to judge in advance solutions which a very self-centered communist power may find expedient. The public and Congress are certainly due an explanation as to why Mr. Carter, Mr. Brzezinski and Mr. Vance did not make an effort to obtain necessary assurances concerning actual and possible problems relating to the matter. Let us note here that Mr. Teng and his friends avoided that error: They protected their own interests and preserved all their options very well.

Another embarrassing example of unseasoned diplomacy in this matter was the eagerness with which Mr. Carter used to his own advantage an alleged statement of approval of the recognition by Mr. Brezhnev. The *Washington Post*, which may be thinking of establishing a Peking edition, headlined Mr. B's "very positive" message on the subject, as related in glowing terms by the President. Moscow, however, corrected the White House version very quickly in a statement to the effect that the account did not represent Mr. Brezhnev's message correctly.

The PRC recognition fits into a rather disorderly ensemble, other elements of which are the Camp David debacle, the oil price rise which need not have happened, and the looming Rhodesian disaster in all of which current U.S. diplomatic techniques figured prominently. Two years in office would seem sufficient to impress our leaders with the obvious fact that in these complicated matters the desire for publicity should not be allowed to overwhelm the need for thoroughness.

The best we can hope for now is that, when he next visits the Far East, Mr. Vance will be able to tidy up the unhappy position in which the U.S. finds itself. The statement from Peking on Dec. 24 is not encouraging, however, stressing as it does the view that the PRC alone, and no one else, including the U.S. is qualified to handle the problem of Taiwan. It made even clearer, if that was necessary, the PRC's belief that it is in no way obligated to accommodate the United States or Taiwan and that Mr. Carter's expectations are therefore illusory.

Mr. HOLLINGS. Some of our commercial colleagues in Japan, asked whether or not the Japanese would adhere to that kind of activity taken by the People's Republic, answered "Yes."

What is that activity? The activity, my friends, is not a military blockade, but rather the very simple device of issuing a public notice in the *Journal of Commerce* that, due to the congested conditions in the port facilities of the People's Republic of China, vessels entering the sovereign water of the PRC would have to obtain an anchorage license to do business.

So any captain of a ship, not wanting to be turned back after his long trip, would apply for the license, and the rest is very obvious: If you do not like the way they do business, there will be no license. If you think they need a lesson, there isn't much the captain can do except accept or go back. I am not criticizing the People's Republic at this point, or addressing their action in Vietnam, but we do know that we are now dealing with a people that are willing to give lessons; and if they wanted to give a lesson to any particular commercial entity that was not doing business the way they thought business should be conducted, there would be no license; there would be a general economic squeeze, and I venture to say that in a matter of months or at most a few years, that \$7.2 billion of business done by the United States of America with Taiwan, export

and import, would all of a sudden be dried up, and then you would have the strangulation of Taiwan. We heard earlier from one of our colleagues that we tried to impress our way in Vietnam, and I agree with him; but we learned a lesson there that the American way was not always accepted.

But there are areas where the American way is fully accepted, and in Taiwan it is accepted: The commercial, free enterprise, competitive, capitalistic system.

That is exactly why we have misgivings when we see our State Department use that nice State Department language of art, "grave concern." Because the State Department leaves a lot to be desired by way of mind and by way of commonsense.

They really barreled on Taiwan and took a friend, one of the best friends we have ever had, and treated them. I should say, as persona non grata. The State Department came up and gave certain "advice" on how Taiwan should sell their U.S. property to the Saudis. That advice was not taken. Incidentally, I will join in the Twin Oaks bill later on. That will be a different amendment.

That advice to sell was not taken by our friends on Taiwan, those who had accepted our way and whom we helped prosper economically, and who we helped build militarily in every sense. They did everything we asked them to do and we with them. They then allowed that the property of the Taiwanese in Washington would immediately be the property of the People's Republic of China.

Of course, we know historically the People's Republic of China in this century had neither control nor jurisdiction of these properties. We were hearing a little earlier about the little cuddly bear, Teng Hsiao-ping. Well, I do not know that the gentleman has ever had the chance to visit Taiwan, though we here in the United States have had that opportunity. I do not know anyone in the PRC government, including Mr. Teng, who has ever been to Taiwan. They do not have control there and have not had jurisdiction. To come out now and say these properties will go to the PRC is just an un-American way to do business.

The way they admonish their ambassador to not even attend a news conference is another thing. I can go down a list or a bill of particulars. But nothing presents it more dramatically than the scurrilous piece of legislation sent over here which shows the total disregard from what was being said publicly. They were saying publicly they want continued cultural, educational, and commercial relationships in the full.

As was stated here a little while ago, on February 16 the President even talked about the security, and how a later President could go to war to protect that security. We know that the President insisted on sending arms. I know not what the purpose of the arms was to be, except to protect the people of Taiwan. And I know of no threat at this particular moment that the United States is concerned about other than the military threat of the People's Republic of China at and against Taiwan.



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So we were concerned about the security, our President was concerned about the security, but that has been a no-no word all afternoon. And we see a total disregard of the security pact which we have at this very minute. We have given notification of termination by the end of this year, in accordance with the treaty, but we do have a solemn treaty with the Taiwanese, a security pact. When the Senator from Maryland and everyone else gets upset when we begin to regard that, when we begin to acknowledge that, when we begin to show a little nationalism here on the floor of the Senate, I do not intend to be lectured by those who claim to see the real world, about the nationalism in the other countries.

I do not know where the nationalism of the people of South Vietnam ever was. We gave 56,000 lives trying to develop it.

There is a lot to be said about nationalism. We learned that people do not like foreigners. We learned that in the People's Republic of China, in Iran, and in France, when they kicked NATO out. We learned that the world around. We have had many lessons about the consideration they have for foreigners.

But when we try to talk and clarify "grave concern" or what it means, then we get blamed for inexact language, and we should go with nebulous nonsense, with a frightened stance, and without speaking clearly.

I want to add one more comment with respect to Vietnam. I respect my colleague from Massachusetts and his dedication to the Peace Corps and his comments with respect to Vietnam. Others have also commented on that.

I remember that commitment. We will obviously not have time to argue it at this time. The Senator from Delaware and others were asking about commitments, whether or not the commitment to Taiwan was as good as the commitment to Western Europe. My answer is yes.

The commitment with Vietnam, and I participated in the debate on the floor, was one of the finer commitments that went along with the Peace Corps.

I happened to be in on the innovation of that institution. There we were doing away with the image of the ugly American, to go to the undeveloped and those countries which wanted help from an advanced nation and say, "Yes, we will help you in medicine with doctors; in language we will help you with teachers, in mathematics, we will help you with instructors, and if you want to build bridges, we will send Peace Corps members there."

And, yes, we were not only committed to our white Caucasian heritage, to Western European culture, but we were just as committed irrespective of race in the Far East.

The commitment in Vietnam was the commitment of the white man for the yellow man, the commitment of the richest nation for the poorest nation, the commitment of the developed for the undeveloped, the commitment of the privileged for the underprivileged.

People forget that, too, as if it was not carried through. But it had the highest

sense of commitment from President Kennedy, President Eisenhower, President Johnson, and many others. A lot of us would be glad to debate that particular commitment some time.

But, yes, to the people of Taiwan I feel we should have a commitment.

What makes it a tremendous frustration to us all is the government itself. I make no commitment to Quemoy and Matsu. This is why we all have a consternation, frustration, and confusion in trying to actually treat a country that is not a country or will not act like a country.

I cannot get anyone on Taiwan to come forward and ask for self-determination. I have discussed this with the Secretary of State and all the people who have come to brief me, asking why do they not have a plebiscite under the United Nations to see whether they want to join the mainland, whether they want to become an independent entity, or whether they want to go back to the Japanese.

Again, back in Vietnam we gave 56,000 for the right of self-determination. That is the kind of commitment I would do for those people as a people, with their own way of life, with a confused heritage.

Taiwan was settled by the Dutch and the Portuguese. The name "Formosa" means "beautiful island" in the Portuguese language. It was a refuge for the Ching Dynasty and then it was taken over by the Manchus, and then conquered in the Sino-Japanese War in 1895. Then they had the Japanese heritage up until the end of World War II when our Western culture was developed there.

I cannot make up the minds, and I have no intention of making up the minds, of the people of Taiwan. They can expect certain measured judgments to be made since there is no language which will trigger us. We do believe in their security but we do not believe in their claim to mainland China. That was a charade and that, too, was a sham. I think the sooner they developed and have a free election the better the Senator from South Carolina is going to feel. In the meanwhile, while we do not consider it a country, and we are not proud of abandoning friends, but the friends will not organize a country, then what do we do? We try to maintain relationships as if they were a country and as if they were still our friends, or in the President's expression, continue cultural, educational, and commercial relations.

In looking at that \$7.2 billion worth of business that we have, our ninth largest trading partner, I can tell you quite candidly that these relations cannot happen under this institute.

That would be like delivering lettuce by way of a rabbit. That institute is not going to represent the United States of America. It will represent the very, very fuzzy and impolite and discourteous conduct of our own State Department.

I say that advisedly, knowing how the State Department came to the Foreign Relations Committee and how they came to our appropriations State-Justice-Commerce subcommittee with the bum's rush. There is no better way to describe it: they tried to treat their own repre-

sentatives just the same way they treated the Taiwanese.

So we are told—take the President's bill and if you make one amendment, we are going to veto it.

They came to me and said, either take the transfer of funds and give them immediately or, come the 1st of March, there will be riots and there will be bloodshed down in Taipei, and you will be responsible for it.

When you are dealing with that kind of mind and incapacity, and stupidity, then what you ought to do is try to give them counsel and care. I will never forget when I first came here, I was told that Washington was the first insane asylum run by the inmates. Not necessarily, but if you were looking for one institution, you could go find it in the personage of the State Department and the way they conduct some of our affairs from time to time.

I have the highest regard individually for the distinguished Secretary of State and many of the officers. I have been a supporter of their endeavors to get better management principles and so on. There is a lot to be admired, do not misunderstand. But they have certain ones from time to time who just go way off the deep end. This is one of those cases.

With that institute, they do not have any idea of doing exactly what the Congress intends. The people of Taiwan know that. The commercial interests in the United States know that. And to a man, they have said, "If you can get some kind of oversight commission similar to what we had with the Helsinki agreements, then it would stabilize Taiwan materially, safeguard the commercial enterprise, and assist the whole relationship between Taiwan and the United States of America."

I have just come back from the NATO conference, and I have followed the Helsinki Agreement. We traveled and I learned its tremendous value in Czechoslovakia, where my distinguished senior colleague on the Foreign Relations Committee, the present manager of the bill (Mr. PELL) served, in Prague. The dissonant movement of 1977 made certain contacts with us and that is their only hope—not the agreement itself, but the Oversight Commission, the Helsinki Commission, composed of Members from Congress and from the executive branch. They can get to and speak to and correspond with and try to help the cause of freedom in East Europe.

I think if we have a commission, the administration does not want to have any executive branch members; I well understand that. They do not want to have an institute. They do not want to have any relations. In fact, I am not nonplussed at that at all. Their idea of an institute was to end the relationship. You would never hear any more than a one-line report of something from time to time, but that would phase out Taiwan and then they would move on to greater things. Then we would have a black eye in the Far East about keeping our word and being true to our representations and true to freedom. We would have lost our credibility because, assuredly, Mr. President, this is exactly

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what happened in the way the President conducted the business on the Taiwan score.

We had asked, we had signed into law last year our desire for consultation. We did not get consultation.

Everyone had heard of the great objection that we had from our strongest ally in the Far East, Japan, how they were totally disregarded in the Shanghai communique and the visitation of Mr. Kissinger and President Nixon, and assuredly we all knew that we should not disregard them in that fashion again. But again we awakened them in the middle of the night and told them that the Taiwan security pact was gone. They have always had a war party in Japan. Now they will have greater persuasion, greater weight for their arguments. They can say, "You know, we have a security pact with the Government of the United States, but you can see how a President can do what he wants to. He can call you up in the middle of the night and say, 'That is the end of that.' We had better start moving."

This President, who has great concerns about nuclear proliferation and what have you, sure lost the battle on that one, because I can tell you now that if you live in Japan, you had better worry and wonder, under this administration, when it comes to a security pact.

Then Israel. That is where the gentleman will be on Saturday. If he gives them a promise of a security pact, I hope the Knesset, I hope the Prime Minister, do not break out laughing about the security pact, because they have every right to say, "Mr. President, that is what you gave to Taiwan and without any consultation, for reasons of greater interest that you had at the moment, you changed a 30-year policy with a call in the middle of the night. We love your security pact, but we would rather have greater assurances than that."

That hurts my feelings, to have our country conduct its business in this fashion. I think it not only hurts our feelings here in the United States; I think it hurts the feelings of all of our friends. It raises serious doubts.

We have spent billions upon billions of dollars to try to establish confidence and friendship, through all the economic instrumentalities—foreign military sales, Peace Corps endeavor, and everything else—to say "You can count on the moral force of the freedom-loving nation, the United States of America, and we shall always stand for that." Then we turn and, bam, bam, it's over.

We did not do as Canada did. Canada said they took note of the PRC's claim to sovereignty over Taiwan. They did not recognize, and they got relations with the People's Republic. Our friends, the British, acknowledged, but they did not recognize, and they got relations.

But rather than just acknowledge, we allowed that Chinese transcript to be written with the word "recognize" and they can continue to say "recognize."

I am back to my little economic notice in the Journal of Commerce. Yes, with that recognizing of the People's Republic as sovereign, we cannot interfere with

sovereignty. That is what the whole argument was with respect to the Panama Canal Treaties. So we do not interrupt sovereignty and we have no standing.

Then they come around and say, "Why can't we handle the property in court?" We have no standing in our own court of public opinion, much less the legal courts. I am trying to get standing in the court of world opinion, not any technical titles and that kind of thing. I am trying to build America, and I am not ashamed of it, when I talk as I do on the floor of the U.S. Senate.

I feel very strongly about this commercial approach to the problem that we have, because, with all the language and nuances, whether it is "grave concern" or "security" or whether it is this or that, it depends on the implementation of this particular piece of legislation. I welcome the assiduous concern and attention that we have had for the bill itself by the House Foreign Affairs Committee and our Senate Foreign Relations Committee. If we can formalize that concern in the form of an oversight commission, then we can bring immediate stability to the dark clouds and trouble on the horizon of where we go from here with Taiwan.

No. 1, Taiwan will not be forgotten. No. 2, there will be contact. No. 3, there will be oversight. And number four, we at the appropriations level are going to follow with good intent the intent of the full Congress, House and Senate, on this particular score.

I appreciate the adjustments that the managers of the bill have made in order to accept this amendment. As I understand, the amendment will be accepted. I agreed then that we would not require a rollcall.

I have agreed to amend that original version to provide for a three-year duration of the commission. I am a believer in sunset legislation. The commission does not have to go on, but I would think within 3 years we would approve it. I do not mind being put on trial with this particular idea. I would have hoped that the validity, the efficacy, the need and the power of an oversight commission would have proved itself to all men of good will and good intent with respect to our involvement in Taiwan and that it would be renewed, perhaps, at that time.

I cannot foresee whether I will be there to renew it or not. I will watch that government over there to see whether they have the right of self-determination.

I guess I am recognizing the People's Republic. I am a realist. I have no bone to pick with them. If they can pick up Taiwan by bamboozling the President of the United States, because they know how to use their power, and we have lost the ability to use ours, that will be a sad ending.

But this little bit of oversight power we have in a national people's body, the Congress of the United States—where we can see that we do act like Americans, as the distinguished Senator from North Carolina pointed out so appropriately earlier this afternoon—can help us keep watch, keep vigilant, keep involved, and hopefully bring a measure of

hope and pride where otherwise we would have none.

Mr. President, I am glad to yield the floor at this time.

Mr. HELMS. Did the Senator yield to me or did he yield the floor?

Mr. HOLLINGS. I yielded the floor.

Mr. HELMS. Mr. President, I have heard the distinguished Senator from South Carolina speak on many occasions and I always enjoy him and admire his eloquence. But I think he has risen to new heights today.

I commend him not only on what he said, but on the amendment that he has proposed and which, as he knows, I am cosponsoring with him.

Mr. President, I rise to join the distinguished Senator from South Carolina in his concern for monitoring our policy in China. I strongly support his idea of a Commission on Security and Economic Cooperation in Asia. Indeed, the Senator from North Carolina proposed a similarly-named commission based on the Helsinki commission model on January 29. The version of the Senator from South Carolina is a broader proposal and I am pleased to be a cosponsor.

The idea of Helsinki-type monitoring is particularly relevant to this bill, because Congress must become aware of the meaning of "peaceful unification" of Taiwan into the mainland. I recently requested the Far Eastern Law Division of the Library of Congress, under the competent direction of Dr. T. T. "Shaw" Hsia to prepare a report on recent developments related to human rights in the People's Republic of China. This was accomplished in a most scholarly and balanced manner, and has been printed as a committee document by the Committee on Foreign Relations. I believe that a copy is on every Senator's desk, and I commend it highly. It will make a fine starting point for the proposed commission.

I also want to refer again to the excellent study on human rights in the People's Republic of China prepared by the Institute on American Relations which I placed in the Record during the debate on the Woodcock nomination. It is an excellent and deeply moving report.

Mr. President, the recognition of the Government of mainland China by President Carter has raised a great amount of anxiety over the future of the island province of Taiwan, and the Government of the Republic of China which is located there in Taipei. Despite assurances by President Carter that the mainland government is pledged not to use force against the Government of Taipei, recent statements by Chinese Vice-Premier Teng Hsiao-ping that he would not rule out the use of force as the ultimate sanction to induce negotiations have unveiled the ultimate goal.

The question is whether there are any circumstances whatsoever under which U.S. policy would like to see the peaceful unification of Taiwan with any Communist government on the mainland. The issue raises larger questions about our belief in the nature of freedom and our willingness to see any group of peoples in the world lost their right of self-determination. It is scarcely conceivable

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able—at least to this Senator—that any people living in the relative freedom of life on Taiwan would willingly choose to be absorbed into a Communist society, even if such a fate took place peacefully.

Teng's threat that force must be reserved as the ultimate sanction to induce the Government of the Republic of China to negotiate indicates that a policy of pressure will be followed, one that doubtless will include diplomatic, economic, and psychological efforts to isolate Taiwan, to restrict its freedom of action in international activities, and to destroy its economy. Taiwan cannot be said to have a choice if its freedom is strangled "peacefully" in a silken noose.

Similarly, Taiwan's choice cannot be said to be free if it is threatened militarily by a buildup of the kind of forces and armaments directed at military invasion, particularly if these forces are concentrated in regions adjacent to the Taiwan Straits. In part, Taiwan's ability to respond will depend upon the United States; but a great deal will depend upon the actions of the Peking government.

There are those who say, hopefully, that Peking will never invade because it would disrupt relations with Japan and the United States. But no one can predict under what future circumstances Peking might decide to act.

The fact remains that the Peking Government has the worst—let me repeat for the purpose of emphasis—the worst human rights record in history, one that surpasses even the graphic descriptions of witnesses to the Cambodian tragedy. A study prepared for the Senate in 1971 estimated that as many as 64 million Chinese died during the Communist programs of liquidation and purge.

Even today, Chinese Communist officials estimate that between 5 and 10 percent of the Chinese people suffer "the dictatorship of the proletariat" in forced labor camps. With a population of 900 million, 5 to 10 percent in forced labor camps is a number equivalent to one-quarter to one-half of the population of the United States. So that, Mr. President, is what we confront.

Those who are not in the forced labor camps live continually in the fear that they, too, might fall under surveillance or "dictatorship." Legal protections are virtually nonexistent; men and women are incarcerated by party directive (the Gang of Four being the most notorious examples).

Personal mobility is restricted not only by the poverty and failure of the Chinese economic system under communism, but also by one of the most restrictive systems of rationing basic daily necessities in the world. Indeed, the very rights which we hold to be fundamental to the nature of man are rigorously suppressed, including the following:

First. The rights of family. The Chinese sense of family runs very deep, based upon the Confucian ideal of respect for one's ancestors. The party has worked very hard to break down this tradition. The liberation of women, most of whom do manual work in the fields, has placed great stress on the family unit. Parents have no control

over the education of their children. Millions of so-called educated youth have been sent from urban centers to remote villages for permanent settlement. Restrictions on marriageable ages forced separation of married couples to job assignments hundreds of miles apart, and public pressures on individual women for abortion and contraception further erode marital rights and privacy.

Second. The rights of religion. Millions of Chinese were adherents of the Buddhist, Taoist, Moslem, and Christian faiths before 1949, and millions more were active followers of the ethical precepts of Confucius. The thousands of temples have been closed, many have been destroyed. A mere handful of religious buildings are kept open for the inspection of foreigners, but no Chinese citizen would dare to enter. Attendance at religious rites would result in job loss, discrimination, surveillance, decrease in rations, and perhaps even a trip to the labor camps.

Third. The rights of labor. No Chinese may join an independent trade union, much less enter upon a strike. Wages in China have been raised only twice in 20 years. A worker has no right to select his job or his assignment.

Fourth. The rights of property. Needless to say, the right to hold private property has completely disappeared, including peasants who may have owned only 2 or 3 acres. Forced collectivization was imposed on all agriculture. Property rights are the foundation of human liberties, and they are nonexistent in Communist China.

Fifth. The rights of political expression. There is only one party in China. There is not even an organized network of dissenters, such as in the Soviet Union. The recent, brief flowering of big character posters, under the careful guidance of party officials, shows that free political expression on the mainland is nonexistent.

Sixth. The rights of economic self-determination. Anyone who advocates personal or private enterprise, no matter how insignificant, is considered a "capitalist roader." No individual may attempt to establish his own economic self-sufficiency outside of the collective plan.

Seventh. The rights of due process. Legal rights simply do not exist in China, and the recent calls for the establishment of legal procedures only points up the fact that, for 20 years, citizens have been at the mercy of party directives, as interpreted by local officials. There is not even a criminal code, much less a code for political offenders.

Mr. President, it is the hope of many that the total absence of human rights, as generally understood in the West, will be ameliorated as time goes by. The emergence of Teng as the strong man in China after the death of Mao has given an indication that there might be evolution toward a better situation. But no one knows how long the adherents of Teng will hold power. The historical record give little confidence that the situation will change for the better permanently. It is far too soon to decide.

All of these reasons are reasons why we should not be in haste to consign the people on Taiwan to the benevolence of the Peking regime. After all, the Republic of China has not ceased to be a legitimate government merely because the United States has withdrawn its Ambassador. It remains in control of a significant part of the territory of China. I believe that it is generally accepted under international law that a country cannot be "de-recognized." A new government may be recognized once it has de facto control of territory. But once it is recognized, it is recognized as long as it has that control. The withdrawal of ambassadors is a separate act that has no bearing on recognition.

Indeed, nations may withdraw ambassadors and go to war with each other, without any implication that their opponents no longer exercise sovereignty over such territory as they control. In fact, quite the opposite is implied.

However, since the administration has chosen to withdraw the U.S. Ambassador from Taiwan and to recognize Peking as the sole government of China, in defiance of reality and international law, special steps should be taken by Congress to safeguard the human rights of the Chinese people who are under the Government of the Republic of China on Taiwan. Neither that Government nor the people cease to exist because of the President's action. It is up to Congress to monitor the human rights situation on the mainland and any potential military buildup which would threaten Taiwan.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate having this time to also associate myself with the remarks of the distinguished Senator from North Carolina and to express my viewpoint that I have always enjoyed the comments that he makes, even when I disagree with him, which is not very often. I have a deep and very firm regard for him.

Mr. President, I ask unanimous consent that I may be added as a cosponsor on his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I appreciated very much the kind words of the Senator from South Carolina.

As cochairman of the Commission on Security and Cooperation in Europe, the so-called Helsinki Commission, I am familiar with the operations of joint commissions of this sort.

Our commission deals with a different problem, however. It deals with a treaty that is multinational in scope and with a treaty that is really a set of pious intentions.

There are very few, if any, specific commitments in that treaty. It is a question of aspirations and intentions.

Now, this commission would deal with one country—or, no longer a country, an area, whatever we wish to call it—and it is a commission that has a different composition. It is not evenly divided between the parties as is the Helsinki Commission, and it does not have members of the executive branch on it.

Personally, I would have qualms about the enactment of this legislation. However, on behalf of the Foreign Relations Committee, we accept the amendment with the proviso that the words "to exist for a period of 3 years, which period shall begin after date of enactment of this act" added onto section 501(a).

I understand that language is in the bill.

Mr. HOLLINGS. That is correct. That is the way the amendment is reported.

Mr. PELL. Before accepting it, I would defer to the ranking minority manager of the bill.

Mr. JAVITS. Mr. President, as I understand it, this commission is a commission composed of Members of Congress and is limited for a period of 3 years.

In a sense, it tends to deal with the jurisdiction which should be that of the Foreign Relations Committee and, I think they call it, the Foreign Affairs Committee in the House.

But in view of the unusual circumstances which are here involved and the fact that we will be going to conference with the House, I see no objection to accepting it.

Mr. HOLLINGS. Wait a minute.

Mr. President, I do not know what this conference with the House is all about. I want to make the record perfectly clear. I have talked and worked in good faith with Senator Church and the director, and others, of the Foreign Relations Committee.

I was told last week they would agree to this amendment. I was told today they would agree to this amendment, and I do not want any monkeyshines in conference. If the Senator wants to have a full vote, I can get an overwhelming vote for this commission. I do not want to act as though this is a little sop to make a political record for the Senator from South Carolina.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. JAVITS. I hope the Senator will not jump at conclusions so fast about sops, and so on. The Senator is welcome to his vote, and I will vote with him. But what is so great about that?

Mr. President, this says that six members would be Members of the House of Representatives, to be appointed by the Speaker.

Mr. HOLLINGS. Right.

Mr. JAVITS. All I had in mind was that they would have an opportunity to examine this and see if it is agreeable to them, too. That is their pigeon, not ours.

Mr. HOLLINGS. I agree with that.

Mr. JAVITS. I have no quarrel with the Senator or his provision, and I wish the Senator would not jump at conclusions about me so fast. I am not given to giving sops or receiving them.

Mr. HOLLINGS. Well, I have been asked by the committee's staff member for three sops within the last hour with respect to the Helms amendment; and when I heard the Senator speak the way he did, I could not think of it as anything other than a sop; because it was said, "If we go along, will you do this, and if we go along, will you do that?"

I am trying to do a substantive thing. I am trying to carry out the intent of the Foreign Relations Committee and the intent of Congress.

As the Senator says, the House could disagree and turn it down. I thought I had the leader of the bill; I thought I had Senator Church. But when I hear someone say, "I don't know about this. Helsinki is different," and someone else says something about weak words when we get to conference, that is why I react the way I do.

Mr. PELL. Mr. President, when we go to conference, no matter whether we think it is different or not, or whether we personally agree or do not agree, we have an obligation to have the act prevail. If I am in that conference, that is my intent, whether I agree or not.

Mr. HOLLINGS. I appreciate the Senator acknowledging that, because we get shaky in the saddle.

I have worked with conference committees, and there is one particular committee in the Senate that has a very common habit—the Finance Committee—of taking any and all amendments.

So I say to the Senator that he should not act as though I am acting strangely, because I have seen this done, and some here are members of the Finance Committee. They will take the amendments and say, "Senator, we'll let you make your talk, but we're not going to stand for that 5 minutes in the conference."

I just wanted that understood clearly. While I agreed to a voice vote and waited to the end, to be courteous to everybody, we can get into this debate and debate all Monday and all Monday night and make absolutely sure that it is brought home to my colleagues. I have been working with Senator Glenn and his staff. We put this amendment off, trying to work it out, in deference to the unanimous vote of the Foreign Relations Committee, in being accommodating and being realistic, and wanting support, also.

But it has to be understood that it is not a political move. We intend, and have those on the House side who fully intend, to keep it there.

Mr. JAVITS. The amendment is acceptable to me, period.

Mr. PELL. Mr. President, I move the acceptance of the amendment of the Senator from South Carolina.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

Mr. HOLLINGS. I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UP AMENDMENT NO. 33

(Purpose: To construe the Taiwan Enabling Act with respect to the continued membership of the people on Taiwan in certain international organizations)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an unprinted amendment numbered 33:

On page 15, between lines 4 and 5, insert the following:

SEC. 115. Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of the people on Taiwan from continued membership in any international financial institution or any other international organization.

Mr. HOLLINGS. Mr. President, I do not know at this point whether this amendment is acceptable to the Foreign Relations Committee. It is worded in the negative. I reworded it from the original amendment I had, with the understanding that what we want is that nothing be done by the Congress of the United States in this particular bill to rue out membership by the people of Taiwan in the World Bank, in the Asian Development Bank, and the International Monetary Fund.

There was a UPI report relative to the visit of our distinguished Secretary of the Treasury to the People's Republic of China, to the effect that the authorities there were pressuring him to help bring about the dismissal of the people of Taiwan from the World Bank and these other international institutions.

That is of tremendous concern to those who want to continue the constancy and uninhibited commercial relations between the United States and the people of Taiwan. I thought that should be spelled out at least in the sense that it is certain that we do not want to evict them from these institutions. Many of the guarantees, many of the business relationships we have, and many of the construction and trade agreements and everything else are based on those guarantees and loans by the Asian Development Bank, the International Monetary Fund, and the World Bank.

I will wait to hear whether we will debate it further and what the disposition of the Foreign Relations Committee is.

Mr. CHURCH. Mr. President, I think this amendment belongs in the bill, and I am happy to accept it.

Mr. HOLLINGS. I thank the distinguished chairman of the Foreign Relations Committee.

Mr. JAVITS. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.



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## UP AMENDMENT NO. 34

Mr. McCURE. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCURE) proposes an unprinted amendment numbered 34.

Mr. McCURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, line 4, insert a new section as follows:

"Nothing in this Act, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission or department to make a finding of fact or determination of law under the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, to deny an export license application or to revoke an existing export license for nuclear exports to the people on Taiwan.

Mr. McCURE. Mr. President, this amendment deals with the provisions of S. 245 and the current status of Taiwan and their relationship to continued, uninterrupted cooperation with Taiwan in the peaceful uses of atomic energy under the Atomic Energy Act and the Nuclear Nonproliferation Act of 1978. I have reviewed the actions of the Foreign Relations Committee and the reported bill, as they may bear on such continued, uninterrupted cooperation, and I am convinced that further clarification and perfection of the bill to insure that cooperation is appropriate and, in fact, may be absolutely necessary. I am anxious to work closely with you and the committee to that end.

Nuclear power development on Taiwan under the 1972 Agreement for Cooperation with the United States has been aggressively pursued. Taiwan has an advanced nuclear power research program and it is becoming increasingly dependent on nuclear power for electric generation. Six nuclear power reactors are in various stages of design, construction, and operation, and they will provide over 10,000 Mwe power by mid-1985. Four additional reactors are scheduled to begin operation later in the 1980's, and nuclear power by 1990 will provide about 50 percent of Taiwan's electrical capacity. Also, pending before the Nuclear Regulatory Commission at this time are seven license applications for two reactors (pending for almost a year), critically required fuel and other materials. Obviously, then, continued, uninterrupted U.S. cooperation is an essential element of Taiwan's economic future, as well as our good-faith relationship with the Taiwan people. Also, as you know, the United States has played a key role in the development of

this nuclear power capacity within the context of a renewed commitment to peaceful uses only of nuclear power, and strict adherence to nonproliferation requirements, in the context of our mutual nonproliferation objectives. Continued, uninterrupted cooperation, therefore, is absolutely essential for both Taiwan and the United States.

I reviewed and analyzed in detail the reported bill, S. 245, after it was reported, and I was convinced that, in the absence of further amendment and additional legislative history, the U.S. cooperation with Taiwan in peaceful uses of atomic energy could be interrupted and seriously jeopardized. I based that conclusion, not on the failure of the committee to address responsibly the general legal situation, but rather on the intricacies and complexities of our domestic licensing law in the Nuclear Regulatory Commission under the Nuclear Nonproliferation Act of 1978. I also based that conclusion on the January 30, 1979 Memorandum to the Nuclear Regulatory Commission's General Counsel on the subject of "Legal Issues Arising from the United States' New China Policy" and the Nuclear Regulatory Commission's General Counsel's letter of February 15, 1979 to House Foreign Affairs Committee Chairman Zablocki on the same subject. In fact, I want to commend the Foreign Relations Committee for concerted efforts to deal constructively and responsibly with the virtual Gordian knot of legal technicalities resulting from the administration's actions in recognizing the People's Republic of China as the sole legal authority for mainland China and Taiwan, and de-recognizing the Republic of China.

The possibility of difficulties under the adopted bill flow from the very specific findings of fact and law that must be made by the Nuclear Regulatory Commission under the Nuclear Nonproliferation Act. As was demonstrated graphically in the Tarapur, India, export case last year, and may be repeated again on the next export license for Tarapur now pending in the Nuclear Regulatory Commission, those required findings of fact and law can and have been rejected on both narrow legal technicalities and virtually unbounded speculation. My strong opinions on the Tarapur case and the outright rejection of the clear congressional intent for continued exports to India under phase I safeguards was documented in my testimony before the Foreign Relations Committee on May 24, 1978 in the hearing on that case. For instance, I am convinced that the recognition of the People's Republic of China as the sole legal authority for Taiwan, as well as the mainland, and the arguable U.S. position that the People's Republic of China eventually and ultimately will be constituted as de facto, as well as de jure governmental authority on Taiwan, could and probably would be argued as the basis for rejection of the required findings for the pending reactor and fuel licenses. Also, the legal arrangements under the bill for the American Institute on Taiwan and its nongovernmental, corporate counterpart in Taiwan probably would be argued as not satisfying

the exact requirements for the specific findings of fact and law. Additionally, there are a series of sensitive matters related to our formal cooperation with Taiwan dealing with exports and nonproliferation that must be covered fully under the reported bill, but which also could be jeopardized in the Nuclear Regulatory Commission in the absence of further clarification and perfection of the bill. I have taken the liberty of sharing these views with several senior administration officials in the nuclear power area, and they share my conclusions and very serious concern about continued, uninterrupted cooperation with Taiwan.

It obviously would be extremely unfortunate if Congress enacted a statute which generally purports to preserve all of our ongoing commercial, cultural and other relationships with Taiwan, but was immediately followed by an effective legal embargo on nuclear exports. We already have experienced that same unfortunate result with India after passage of the Nuclear Nonproliferation Act last year, and we also had an extended legal embargo of our European allies in EURATOM, under the act. Recognizing the critical and immediate importance of this matter, and its extreme sensitivity, I am convinced that we must act to insure that the enacted bill directly preserves, as a matter of clearly predictable law, our nuclear cooperation with Taiwan. As I mentioned, I have concluded that an amendment will be appropriate and probably necessary to achieve that goal.

Mr. President, once I concluded that action was appropriate on this issue, I approached last week the chairman of the Foreign Relations Committee, my colleague from Idaho, with my conclusions and recommendations. We have proceeded over the last week to work closely and cooperatively together on this issue, with the State Department and our respective staffs to develop a mutually agreeable approach to resolving the issue. The pending amendment is the product of our cooperative efforts. I thank him, his committee staff, and the State Department for their assistance and cooperation in fashioning the required clarification and perfection of the bill on this issue.

Let me turn now to the details of the amendment. The effect of the amendment will be to state expressly in the statute that this act is intended to and shall be construed in any administrative or judicial proceeding as providing the full legal basis, in terms of the continuing legal relationships between the United States and the people on Taiwan, to satisfy all statutory requirements and criteria for nuclear exports under the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, and thereby insure the continued legal basis for full, uninterrupted cooperation in the peaceful uses of atomic energy between the United States and the people on Taiwan pursuant to the 1972 Agreement for Cooperation, as amended, and any other applicable agreements, notwithstanding: First, The President's action in extending diplomatic recognition to the People's

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Republic of China, the President's action in withdrawing diplomatic recognition from the Republic of China, and attendant circumstances; nor; second, the operation of any specific provisions of this Act, such as those dealing with the American Institute on Taiwan or its counterpart instrumentality representing the people on Taiwan. That effect is achieved by stating affirmatively that the facts of the People's Republic of China recognition and the derecognition of the Republic of China, and attendant facts shall be legally irrelevant in any proceeding dealing with nuclear exports and other forms of cooperation under the Atomic Energy Act and the Nuclear Nonproliferation Act, and also that the procedures under S. 245 for continued cooperation with Taiwan through the American Institute on Taiwan and its counterpart instrumentality shall satisfy the procedural requirements of those acts.

The Amendment also states that nothing in S. 245 on the facts of the status changes for the People's Republic of China or the Republic of China can be used as a legal basis to deny an export license application, revoke an existing license, or disapprove other authorized forms of cooperation. These parallel affirmative and negative formulations in the Amendment will leave no room for the types of interpretation suggested in the Nuclear Regulatory Commission's General Counsel's Memorandum of January 30, 1979 or his letter of February 15, 1979. Also, this formulation should foreclose as a matter of law the type of creative misinterpretation which formed the basis for the opinion of Commissioners Bradford and Galinsky in the Tarapur case last year.

Several additional matters are relevant at this point. This Amendment and the related provisions of the bill will insure full, continued cooperation with Taiwan. That cooperation legally can include government-to-government transfers under section 54, 64, and 111 of the Atomic Energy Act (section 301 of the Nuclear Nonproliferation Act), technology transfers under section 57B (section 302 of the Nuclear Nonproliferation Act), subsequent arrangements under section 131 (section 303 of the Nuclear Nonproliferation Act), export licensing under sections 126, 127, 128, 129, 130, and 109 (sections 304 through 309 of the Nuclear Nonproliferation Act), and other authorized forms of cooperation under the provisions of the Atomic Energy Act and the Nuclear Nonproliferation Act.

All of these specific forms of cooperation shall continue through and by the American Institute on Taiwan and the counterpart instrumentality on Taiwan. The legally-satisfactory, specific procedures for that cooperation, pursuant to this amendment and the other provisions of this bill, will be in the following form:

**SUMMARY OF NUCLEAR EXPORT PROCEDURES APPLICABLE TO THE PEOPLE ON TAIWAN UNDER S. 245**

Section 101 (a) provides that whenever any law, regulation, or order the U.S. refers or relates to a foreign "nation", or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the People on

Taiwan. In this regard the Foreign Relations Committee report on the Act (Report No. 96-7, 96th Congress, 1st session) indicates that Section 101 (a) continues the eligibility of the people on Taiwan under the Atomic Energy Act of 1954.

The Atomic Energy Act of 1954, as most recently amended by the Nuclear Nonproliferation Act of 1978 (NNPA), contains numerous provisions relating to nuclear cooperation with foreign "nations". For example, Section 123 of the Atomic Energy Act, as amended, requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under Section 101 (a) of the Taiwan Enabling Act (TEA), would be applicable to the people on Taiwan.

Section 104 of the proposed TEA confirms that all treaties and other international agreements entered into between the U.S. and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law. In accordance with this provision, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Under Section 123 of the Atomic Energy Act, as amended, agreements for cooperation are prerequisite for certain nuclear cooperation. Section 405(a) of the NNPA of 1978 confirms the authority to continue cooperation under agreements entered into prior to enactment of that Act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of the proposed TEA provides for the continuance of programs, transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the U.S. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports. Thus, this provision reconfirms that nuclear programs, transaction and relations with Taiwan may continue in accordance with law.

Section 106 (a) of the proposed TEA provides that programs, transactions, and other relations shall, in the manner and to the extent directed by the President be carried out or through the American Institute in Taiwan (AIT). In connection with this provision, it is anticipated that the President will direct that nuclear programs, transactions and other relations be carried out by or through the AIT.

Section 108 of the TEA empowers the AIT, in the manner and to the extent directed by the President, to enter into perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan. In connection with this provision, it is anticipated that the President will direct that agreements or arrangements in the nuclear field be entered into, performed, enforced or considered to be in force by all through the AIT. Thus, pursuant to this section (and to Section 405 (a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, Section 404 (a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may conduct such renegotiation. Further the AIT will be able to perform, on behalf of the U.S. or any Department or Agency or enforce agreements or other arrangements relative to the people on Taiwan.

Section 109 of the proposed TEA provides that any performance, communication, assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instru-

mentality established by the people on Taiwan. In connection with this Section, it is noted that Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as this instrumentality. It is anticipated that the President will direct that performance, communication, assurances, undertakings and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed Section 109 authorizes this to be done on behalf of the U.S. or any department or agency. Thus, assurance that a proposed export is subject to the U.S.-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Section 401(c) of the proposed TEA indicates that agreements and transactions made by or through the Institute shall be subject to the same congressional notification, review and approval requirements and procedure as if such agreements are made by or through the Department or Agency of the U.S. on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under Section 123 of the Atomic Energy Act will apply.

Within this framework, the same procedures established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR Part 110, and the Executive branch procedures published at 43 Federal Register 25326-30 will apply. These procedures are described in Chapter IX of the First Annual Report of the President to the Congress pursuant to Section 601 of the NNPA.

The procedural variance in the application of the procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the USG must deal with, seek assurances from, or receive assurances from the CCNAA, the USG will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows:

The process is initiated when the U.S. company that is either the shipper of the source or special nuclear material or the exporter of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the Executive branch analysis and judgment provided for in Section 126 of the Atomic Energy Act, as amended.

In preparing this judgment, the Executive branch would seek, in accordance with Section 1 (e) of Part B of the Executive Branch Procedures, confirmation that the export would be subject to the terms and conditions of the U.S.-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Energy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people of Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The Executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the Executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or Executive

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branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State through the AIT to the CCNAA, which would provide the necessary assurances or information.

The procedure that I have outlined here is the complete and adequate basis for the Nuclear Regulatory Commission to make all the findings with regard to the continuation of the Agreement for Cooperation under section 123, including section 126a(2) and section 53a and section 103d requirements of the Atomic Energy Act of 1954, as amended, along with other relevant sections of that act. Therefore, it is clear to me that the full intent of the Senate in adopting this amendment is to insure that the 1972 Agreement for Cooperation with Taiwan, as amended, has been and remains fully in force. Furthermore, the Tri-Lateral Agreement between the United States, the IAEA, and the Taiwan authorities is fully preserved by this amendment and the act and remains fully in force.

On the basis of the content of the Taiwan Enabling Act, it is my belief and clear understanding that the Nuclear Regulatory Commission can make all of the necessary findings without the required amendment to the Nuclear Regulatory Commission regulations once the President has used his authority under the act to direct the appropriate procedure.

The continued approval of exports to the people of Taiwan is not dependent upon the continuation of the IAEA Tri-Lateral Agreement for Cooperation with the United States and Taiwan because the safeguards necessary to satisfy Criterion 1 of section 128 of the Atomic Energy Act of 1954, as amended, can be met under the Bi-Lateral Agreement for Cooperation between the United States and Taiwan. This is so because Criterion 1 in the statute only requires that the IAEA safeguards or their equivalent must be maintained. Fully equivalent safeguards may be provided by and carried out under the control of the American Institute on Taiwan with Nuclear Regulatory Commission or Department of Energy personnel for satisfying the requirements of the Nuclear Regulatory Commission. This approach should be wholly adequate to maintain adequate safeguards over U.S. exports and technology in the unlikely event that the IAEA Tri-Lateral Agreement is suspended.

In case there is any doubt, it is my belief and intent that the amendment makes it clear that physical security inspections pursuant to IAEA procedures and required by Criterion III of section 127 of the Atomic Energy Act of 1954, as amended, can be met through assurances and inspections provided by the American Institute on Taiwan and that the Nuclear Regulatory Commission should find those assurances and inspections by the American Institute on Taiwan to be acceptable for meeting the requirements of the Atomic Energy Act of 1954, as amended.

I have also considered the requirement for the Nuclear Regulatory Commission

to find that an export is not inimicable to the common defense and security of the United States in approving exports, and I have, in drafting the amendment, clearly intended to address that issue. It is my intent that the Nuclear Regulatory Commission shall not consider that extension of recognition of the People's Republic of China or the absence of diplomatic relations between the people on Taiwan and the United States as cause for establishing any differences in circumstances per se for its findings on the issue of inimicality to the common defense and security of the United States with regard to nuclear exports to the people on Taiwan.

It is also my intent by offering this amendment that the scope of the amendment not only apply to export licenses and applications, but also any other authorized form of cooperation with the people on Taiwan in the peaceful uses of atomic energy pursuant to both the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978. For instance, the amendment contemplates that there will be no change in law or circumstance with regard to processing applications for government-to-government transfer, technology transfers and subsequent arrangements among others.

● Mr. STONE. Mr. President, I respectfully request to join as a cosponsor of the amendment offered by the distinguished Senator from Idaho. This amendment makes absolutely clear that the ending of formal, diplomatic relations between the United States and the Republic of China and the enactment of pending legislation shall not, in any way, interfere with the present procedures, agreements, or arrangements in the future between the United States and the Republic of China with respect to cooperation in the peaceful uses of atomic energy pursuant to the Atomic Energy Act of 1954.

Mr. President, while S. 245 and the committee report, as reported by the Senate Foreign Relations Committee, make clear that the Republic of China will constitute a "nation" under the Atomic Energy Act of 1954 and would be eligible for continued full cooperation under that act, S. 245 establishes such an unusual and unprecedented framework for the relationship between our country and another country; namely, the Republic of China, that I think this amendment is necessary to remove any ambiguity as to the intention of Congress that the Nuclear Regulatory Commission proceed as usual in considering present and future nuclear export arrangements between the United States and the Republic of China and that neither the President's action in recognizing the People's Republic of China nor the absence of diplomatic relations between the Republic of China and the United States shall be legally relevant in any proceedings or procedures pursuant to the Atomic Energy Act.

Mr. President, my concern about this matter is evidenced by a letter which I wrote to the Chairman of the Nuclear Regulatory Commission, to which I have not yet received a reply. I ask that the

text of my letter be printed at this point in the RECORD.

The letter follows:

FEBRUARY 14, 1979.

Chairman JOSEPH HENDRIE,  
U.S. Nuclear Regulatory Commission, Washington, D.C.

DEAR CHAIRMAN HENDRIE: The Senate Foreign Relations Committee is soon to markup the Administration's proposed legislation under which commercial relations with the Republic of China are to be continued. This draft legislation in Title I is designed to implement the President's stated intent that all existing commercial relations are to be continued. However, in view of the importance of American nuclear exports to the Taiwan economy and to our nuclear industry, I should like to receive the specific assurance of the Commission that under this proposal nuclear export licensing will continue in accordance with the existing Agreement for Cooperation between the United States and the Republic of China on Taiwan, and that the U.S. commitment to the reliable supply of nuclear goods and services under this Agreement is promptly reaffirmed. For this reason, I am soliciting your early agreement to the following:

That Taiwan, or that the People of Taiwan, meet the criteria and standards required for nuclear cooperation under the Nuclear Non-Proliferation Act of 1978;

That the Nuclear Regulatory Commission will be able to resume nuclear export licensing under the existing Agreement immediately following passage of the Administration's enabling legislation;

That the Commission does not foresee any legal problems under the Atomic Energy Act that may require a legislative solution to permit continued nuclear cooperation with the People of Taiwan.

Your early response to these inquiries will be greatly appreciated.

Most cordially,

RICHARD (DICK) STONE. ●

Mr. McCURE. Mr. President, will the floor manager of the bill, the chairman of the committee, agree with me that the provisions of S. 245 before the Senate are intended to continue the full cooperation in the peaceful uses of atomic energy, pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, which existed before January 1, 1979?

Mr. CHURCH. I agree completely that the provisions of the bill are intended to achieve that result, and I would invite the attention of my colleague to the following passages in the Foreign Relations Committee report on the bill. In the discussion of subsection 101(a), on page 23 of the report, it is expressly stated that the people on Taiwan will constitute a "nation" under the Atomic Energy Act of 1954, thus continuing the eligibility of the people on Taiwan for full cooperation under that act, and, as a result, the Nuclear Nonproliferation Act. The discussion of section 105, on page 25, makes specific reference to the assured continuation of authority for nuclear exports.

The discussion of section 109, on page 27, discusses as an example how the Arms Export Control Act is intended to operate, under the provisions of this bill, through the American Institute on Taiwan and the counterpart instrumentality established by the people on Taiwan. The procedures for the Arms Export Control Act would be analogous to those for the Nuclear Nonproliferation Act, and would

be intended to satisfy the requirements of the latter act. Also, the discussion of subsection 401(c), on page 39, expressly states that the procedures of section 123 of the Atomic Energy Act, which was amended by the Nuclear Nonproliferation Act, for review and approval of agreements for cooperation in the peaceful uses of atomic energy shall continue to apply to such agreements with the people on Taiwan by or through the American Institute on Taiwan. In summary, it is the committee's clear intent that the provisions of the bill apply directly to the cooperation with the people on Taiwan in the peaceful uses of atomic energy and assure the predictable continuation of that cooperation.

Mr. McCLURE. The House Foreign Affairs Committee report on the companion legislation, H.R. 2479, on page 10, indicates that—

The bill does not affect the future resolution of legal issues based on changed circumstances; it simply makes the fact of derecognition irrelevant to the resolution of those issues. For example, under this section, the Nuclear Regulatory Commission will be able to make the required findings and determinations under the Atomic Energy Act of 1954, as amended, in order to permit continued nuclear exports to Taiwan, and derecognition will not constitute a basis for not making those findings and determinations. At the same time, nothing in this bill will prevent the Commission from taking into account subsequent changes in circumstances in its application of the statutory criteria.

Also, the House report on page 8 states that—

In other words, derecognition is to be legally irrelevant in deciding issues involving Taiwan under United States law. In particular, this section preserves the rights and obligations of Taiwan under United States law.

Is it correct to say that the intent of the Foreign Relations Committee and the provisions of S. 245 are consistent with that expressed House Committee position.

Mr. CHURCH. Yes; the committee intends that the provisions of S. 245 will lead to the same result in that regard, as the expressed House committee position. In effect, the operation of this bill is intended to satisfy fully the procedural requirements of the Atomic Energy Act and the Nuclear Nonproliferation Act, and further, the facts of the President's action in recognizing the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States or the lack of recognition by the United States, and the attendant circumstances there-to will be legally irrelevant in any administrative or judicial proceeding dealing with nuclear export license applications or other authorized forms of cooperation in the peaceful uses of atomic energy with the people on Taiwan. So, this bill and our intent are consistent with the House companion bill and the House committee position in this regard.

Mr. McCLURE. With regard to the specific, step-by-step procedures for nuclear exports and other authorized forms of cooperation in atomic energy, would you agree that the provisions of this bill

provide all of the necessary authority to continue those exports and other authorized forms, and further that those procedures under the provisions of this bill are intended to satisfy the requirements of the Atomic Energy Act and the Nuclear Nonproliferation Act?

Mr. CHURCH. Yes; S. 245 clearly provides the authorities necessary for the U.S. Government and the people on Taiwan to continue procedurally that cooperation, including nuclear exports and other authorized forms, by and through the American Institute on Taiwan and the counterpart instrumentality established by the people on Taiwan. Further, it is the clear intent of the bill that those procedures by and through the Institute and the counterpart instrumentality shall satisfy any procedural requirements of the Atomic Energy Act or the Nuclear Nonproliferation Act for such cooperation, as mentioned earlier. Procedurally, this is how it would be done.

**SUMMARY OF NUCLEAR EXPORT PROCEDURES APPLICABLE TO THE PEOPLE ON TAIWAN UNDER S. 245**

Section 101(a) provides that whenever any law, regulation, or order the United States refers or relates to a foreign "nation," or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan. In this regard the Foreign Relations Committee report on the Act (Report No. 96-7, 96th Congress, 1st session) indicates that section 101(a) continues the eligibility of the people on Taiwan under the Atomic Energy Act of 1954.

The Atomic Energy Act of 1954, as most recently amended by the Nuclear Nonproliferation Act of 1978 (NNPA), contains numerous provisions relating to nuclear cooperation with foreign "nations." For example, section 123 of the Atomic Energy Act, as amended, requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under section 101(a) of the Taiwan Enabling Act (TEA), would be applicable to the people on Taiwan.

Section 104 of the proposed TEA confirms that all treaties and other international agreements entered into between the United States and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law. In accordance with this provision, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Under section 123 of the Atomic Energy Act, as amended, agreements for cooperation are prerequisite for certain nuclear cooperation. Section 405(a) of the NNPA of 1978 confirms the authority to continue cooperation under agreements entered into prior to enactment of that act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of the proposed TEA provides for the continuance of programs,

transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the United States. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports. Thus, this provision re-confirms that nuclear programs, transactions, and relations with Taiwan may continue in accordance with law.

Section 106(a) of the proposed TEA provides that programs, transactions, and other relations shall, in the manner and to the extent directed by the President be carried out or through the American Institute in Taiwan (AIT). In connection with this provision, it is anticipated that the President will direct that nuclear programs, transactions, and other relations be carried out by or through the AIT.

Section 108 of the TEA empowers the AIT, in the manner and to the extent directed by the President, to enter into, perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan. In connection with this provision, it is anticipated that the President will direct that agreements or arrangements in the nuclear field be entered into, performed, enforced, or considered to be in force by all through the AIT. Thus, pursuant to this section (and to section 405(a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, section 404(a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may conduct such renegotiation. Further the AIT will be able to perform, on behalf of the United States or any department or agency or enforce agreements or other arrangements relative to the people on Taiwan.

Section 109 of the proposed TEA provides that any performance, communication assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instrumentality established by the people on Taiwan. In connection with this section, it is noted that Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as this instrumentality. It is anticipated that the President will direct that performance, communication, assurances, undertakings, and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed section 109 authorizes this to be done on behalf of the United States or any department or agency. Thus, assurance that a proposed export is subject to the United States-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Section 401(c) of the proposed TEA indicates that agreements and transactions made by or through the Institute shall be subject to the same congress-



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sional notification, review and approval requirements and procedure as if such agreements are made by or through the department or agency of the United States on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under section 123 of the Atomic Energy Act will apply.

Within this framework, the same procedures established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR part 110, and the executive branch procedures published at 43 Federal Register 25326-30 will apply. These procedures are described in chapter IX of the First Annual Report of the President to the Congress pursuant to section 601 of the NNPA.

The procedural variance in the application of the procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the USG must deal with, seek assurances from, or receive assurances from the CCNAA, the USG will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows:

The process is initiated when the U.S. company that is either the shipper of the source or special nuclear material or the exporter of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the executive branch analysis and judgment provided for in section 126 of the Atomic Energy Act, as amended.

In preparing this judgment, the executive branch would seek, in accordance with section 1(c) of part B of the executive branch procedures, confirmation that the export would be subject to the terms and conditions of the United States-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Energy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people on Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or executive branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State

through the AIT to the CCNAA, which would provide the necessary assurances or information.

At this point in the RECORD, I ask unanimous consent to include a letter from the Department of State confirming the administration's intent to proceed in the manner I have outlined. Again, these procedures are intended, as a matter of law, to satisfy all of the Atomic Energy Act and the Nuclear Nonproliferation Act procedural requirements for continued cooperation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,  
Washington, D.C., March 8, 1979.

HON. FRANK CHURCH,  
Chairman, Foreign Relations Committee,  
U. S. Senate.

DEAR MR. CHAIRMAN:

This letter is in response to your request for a description of how the Administration expects the proposed Taiwan Enabling Act, S. 245, to be implemented with respect to the processing of nuclear exports. The Department has prepared the enclosed summary document to clarify this matter.

I believe this explanation shows that, under the pending bill, the absence of diplomatic relations will be irrelevant to continued nuclear exports to Taiwan. Apart from the involvement of the American Institute in Taiwan and the Coordination Council for North American Affairs in the procedures, nuclear exports will proceed on the same basis as prior to U.S. normalization of relations with the People's Republic of China.

I hope the enclosed explanation will be helpful to the Senate in its consideration of the proposed legislation.

Sincerely,

DOUGLAS J. BENENT,  
Assistant Secretary for  
Congressional Relations.

SUMMARY OF NUCLEAR EXPORT PROCEDURES  
APPLICABLE TO THE PEOPLE ON TAIWAN  
UNDER S. 245

Under the U.S. Atomic Energy Act of 1954, as most recently amended by the Nuclear Non-Proliferation Act of 1978 (NNPA), an "agreement for cooperation" is a prerequisite for the export of nuclear reactors and fuel. Such agreements are concluded in accordance with a procedure established by section 123 of the Atomic Energy Act. Actual exports of reactors and fuel pursuant to such agreements are licensed by the Nuclear Regulatory Commission, after it has received the judgment of the Executive branch on whether the license should be issued. This licensing is done in accordance with substantive export licensing criteria established by law and under procedures established by law, regulations, and Executive branch department and agency procedures.

The United States entered into a nuclear cooperation agreement with the Republic of China in 1955. This agreement, as amended, was superseded by an agreement that entered into force in 1972 and was amended in 1974. Exports of nuclear reactors and fuel have been licensed under these agreements.

With respect to the authority for continued nuclear exports to Taiwan, section 101(a) of the proposed Taiwan Enabling Act S. 245, provides that whenever any law, regulation, or order the U.S. refers or relates to a foreign "nation", or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan. In this regard, the Foreign Relations Committee report (Report No. 96-7, 96th Congress, 1st session) indicates that section 101(a) con-

tinues the eligibility of the people on Taiwan under the Atomic Energy Act.

Section 104 of S. 245 confirms that all treaties and other international agreements entered into between the U.S. and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law.

Section 105 of S. 245 provides for the continuance of programs, transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the U.S. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports.

Section 106(a) of S. 245 provides that U.S. Government programs, transactions and other relations with respect to the people on Taiwan shall, in the manner and to the extent directed by the President be carried out by or through the American Institute in Taiwan (AIT).

Section 108 of S. 245 empowers the AIT, in the manner and to the extent directed by the President, to enter into, perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan.

Section 109 of S. 245 provides that any performance, communication, assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instrumentality established by the people on Taiwan.

The Presidential directives under sections 106, 108 and 109, since provided for by statute, will have the force of law and be binding on all persons and government agencies.

Section 401 (c) of S. 245 indicates that agreements and transactions made by or through the Institute shall be subject to the same congressional notification, review and approval requirements and procedure as if such agreements are made by or through the Department or Agency of the U.S. on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under section 123 of the Atomic Energy Act will apply.

The Atomic Energy Act contains numerous provisions relating to nuclear cooperation with foreign "nations". For example, section 123 of the Atomic Energy Act requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under section 101 (a) of S. 245, would be applicable to the people on Taiwan.

In accordance with section 104 of S. 245, and with the stated concurrence of the authorities on Taiwan, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Section 405 (a) of the NNPA confirms the authority to continue cooperation under agreement entered into prior to enactment of that Act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of S. 245 reconfirms that nuclear programs, transaction and relations with Taiwan may continue in accordance with law.

Under section 106(a) of S. 245, it is anticipated that the President will direct that these nuclear programs, transactions and other relations be carried out by or through the AIT. Transactions by private U.S. firms in nuclear matters would, of course, continue on a direct basis without AIT involvement.

It is further anticipated that the President will, in connection with section 108 of

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S. 245, direct that agreements or arrangements in the nuclear field be entered into, performed, enforced or considered to be in force by or through the AIT. Thus, pursuant to this section (and to section 405 (a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, section 404 (a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may enter into such an agreement. Further the AIT will be able to perform, on behalf of the U.S. or any department or agency or enforce agreements or other arrangements relative to the people on Taiwan.

Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as its instrumentality for unofficial dealings on behalf of the people on Taiwan. It is anticipated that the President will, in connection with section 109 of S. 245, direct that performance, communication, assurances, undertakings and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed section 109 authorizes this to be done on behalf of the U.S. or any department or agency. Thus, assurance that a proposed export is subject to the U.S.-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Within this framework, the same procedure is established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR Part 110, and the Executive Branch Procedures published at 43 Federal Register 25326-30 will apply. These procedures are described in Chapter IX of the First Annual Report of the President to the Congress pursuant to section 601 of the NNPA.

The significant variance in the application of the regulations and procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the United States Government must deal with, seek assurances from, or receive assurances from the CCNAA, the United States Government will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows.

The process is initiated when a company that is either arranging for the transport of the source or special nuclear material or is the supplier of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the Executive branch analysis and judgment provided for in section 126 of the Atomic Energy Act.

In preparing this judgment, the Executive branch would seek, in accordance with section 1 (c) of Part B of the Executive Branch Procedures, confirmation that the export would be subject to the terms and conditions of the U.S.-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Energy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people on Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The Executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the Executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or Executive branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State through the AIT to the CCNAA, which would provide the necessary assurances or information.

Mr. McCLURE. A memorandum of January 30, 1979, to the Commissioners of the Nuclear Regulatory Commission from the Commission's General Counsel, Subject: Legal Issues Arising from the United States' New China Policy, raises a series of questions about continued nuclear exports to Taiwan resulting from the January 1, 1979, change in status, including the issue of the legal definition of "nation" in the Atomic Energy Act, the status of the 1972 Agreement for Cooperation, the status of assurances and commitments, the legal import of the People's Republic of China recognition, and other issues. Would you agree that S. 245 addresses and disposes of all of those legal issues, so that cooperation in the peaceful uses of atomic energy, including nuclear exports, can continue, without any legal impediments, as before?

Mr. CHURCH. Yes. S. 245 addresses and dispenses directly of those issues in the January 30 memorandum to insure that there is full legal authority to continue that cooperation, including nuclear exports, and it is our specific intent that the authority shall be used so that continued cooperation will result.

Mr. McCLURE. A letter of February 15, 1979, to Chairman ZABLOCKI of the House Foreign Affairs Committee from the Nuclear Regulatory Commission's General Counsel responded to a series of questions from the chairman on the issue of continued cooperation, including nuclear exports. The letter raised some additional issues regarding the legal import of the status of the people on Taiwan for nuclear export statutory criteria, the legal authority of the American Institute on Taiwan and its counterpart instrumentality, under the Atomic Energy Act and the Nuclear Nonproliferation Act, to procedurally continue cooperation, including nuclear exports, the authority of the President to establish the specific procedures, and other issues. Does S. 245 address and dispose of all the legal issues raised in the February 15, 1979, letter, so that cooperation can continue without any legal impediments, as before?

Mr. CHURCH. Yes. S. 245 addresses and disposes directly of all those issues in the February 15 letter to insure that there is full legal authority to continue that cooperation, including nuclear exports, and it is our specific intent that the authority shall be used so that continued cooperation will result.

Mr. McCLURE. Would you agree, then, that the pending amendment will clarify fully, as a matter of law in the statute, the clear intent of the Congress that all of the aforementioned legal and procedural questions are resolved in the bill and that this bill shall authorize and as-

sure continued cooperation, including nuclear exports?

Mr. CHURCH. I agree completely with your statement of the effect of the amendment and the intent of the Congress in enacting it in this bill.

Mr. McCLURE. It is my intent by offering this amendment that the scope of the amendment not only apply to export licenses and applications, but also technology transfers, subsequent arrangements and any other authorized form of cooperation with the people on Taiwan in the peaceful uses of atomic energy pursuant to both the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978. Is that also your intent in agreeing to accept this amendment?

Mr. CHURCH. Yes; the intent is not to limit the scope of the amendment in a legal sense to only export licenses and applications.

Mr. President, I find this amendment acceptable, and I believe that it clarifies the matter of real importance to the United States in the field of implementing our nuclear policy.

I commend the Senator for offering the amendment.

Mr. President, I move the adoption of the amendment.

Mr. JAVITS. Mr. President, the amendment is acceptable to me, and I am grateful for the explanation about the detail of what the Senator from Idaho intends.

I thank my colleague.

Mr. CHURCH. I thank the Senator from New York.

Mr. McCLURE. I thank the Senator from New York.

Mr. CHURCH. Mr. President, with the support of the ranking minority member, I again move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### TAIWAN ENABLING ACT AND THE U.S.-ROC MUTUAL DEFENSE TREATY

● Mr. CRANSTON. Mr. President, today we are considering the Taiwan Enabling Act, S. 245. I support that legislation as an essential part of the process of normalization and the establishment of full diplomatic relations with the People's Republic of China while at the same time maintaining our strong commercial, cultural, and other relations with the people on Taiwan on an unofficial, but no less substantive, basis.

One of the essential acts in the process of normalization of relations with the People's Republic of China was the termination of the mutual defense treaty between the Republic of China on Taiwan and the United States.

The President, on behalf of the United States, has given notice of the termination of that treaty effective December 31, 1979. I personally believe that this action of the President was correct and

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within his authorized and constitutional powers because article X of the treaty expressly authorizes such termination.

However, the constitutional question of the power of a President to so terminate the mutual defense treaty is the subject of a considerable difference of opinion, including that of two of the most distinguished colleagues in this Senate Chamber. Senator KENNEDY, the distinguished senior Senator from Massachusetts, is of the firm view that President Carter was right in recognizing the People's Republic of China and in giving notice to terminate the mutual defense treaty with Taiwan.

The distinguished senior Senator from Arizona, Senator GOLDWATER, is of the equally firm view that the President does not have the power unilaterally to terminate the mutual defense treaty with the Republic of China, whatever the merits of recognizing the People's Republic of China as the sole legal government of China. Senator GOLDWATER is of the view that the President needs either two-thirds approval of the U.S. Senate or congressional concurrence. This constitutional issue has now been presented by Senator GOLDWATER and some of his colleagues both in the House and Senate to our judicial system for resolution.

Both Senator KENNEDY and Senator GOLDWATER have presented their views in the current issue of the American Bar Association Journal. Senator KENNEDY has written an article supporting his view under the title "Normal Relations with China: Good Law, Good Policy." And Senator GOLDWATER has presented his views immediately following Senator KENNEDY's views in an article entitled "Treaty Termination Is A Shared Power."

Mr. President, I welcome these two articles and their scholarly and succinct presentation of the constitutional questions and public policies involved. I personally believe that Senator KENNEDY's position is the stronger position from the standpoint of constitutional law and history and is the preferable position from the standpoint of the conduct of foreign policy. However, I think it important that each of us consider both sides of this important question.

Mr. President, I ask that the text of the article by the Honorable EDWARD M. KENNEDY and the article by the Honorable BARRY M. GOLDWATER in the February 1979, issue of the American Bar Association Journal be printed in the RECORD.

The articles are as follows:

NORMAL RELATIONS WITH CHINA: GOOD LAW,  
GOOD POLICY

(By EDWARD M. KENNEDY)

For almost three decades, until the end of 1978, American foreign policy was plagued by an anomaly. Alone among the major nations of the world, the United States had failed to recognize officially a basic fact of international life—that the People's Republic of China effectively governs China's territory and one billion people. But last December 15 President Carter courageously decided to establish diplomatic relations with the People's Republic as of January 1, 1979, and to exchange ambassadors on March 1. He thereby successfully concluded the normalization process begun by President Nixon and

Chairman Mao in the 1972 Shanghai communiqué.

At the same time the president notified Peking's rival, the Republic of China on Taiwan, that the United States would terminate diplomatic relations with it. The two competing governments have long held that only one of them can be recognized as the government of China and that Taiwan is a part of China. The president also announced that the United States would give notice on January 1—as it did—of its intention to terminate one year hence the 1954 Mutual Defense Treaty with the government of Taiwan under Article 10 of the treaty.

The United States formerly declared, however, its continued interest in the peaceful resolution of the Taiwan issue and the continuation of commercial, cultural, and other nongovernmental relationships with the people of Taiwan. The Carter administration also provided for Taiwan's future ability to defend itself by making clear that its authorities could continue to purchase selected defensive weapons in the United States.

I welcome and support this decision. It was right in its recognition of the reality of China. It was responsible in its provision for the continuing well-being of the people of Taiwan. It was a well-timed stroke of grand strategy, giving the United States maximum benefit in our triangular relationship with China and the Soviet Union, consolidating the unprecedented process of accommodation among China, Japan, and the United States, and ushering in a new era of cooperation and friendship between the world's most powerful and the world's most populous nations.

In thus establishing a normal and enduring relationship with China, the president enhanced the prospects for peace and prosperity of Taiwan. By changing the form of our relations with the island, the president enhanced their substance and durability. While Peking continues to maintain that Taiwan "is entirely China's internal affair," it has not contradicted the statement that the United States "continues to have an interest in the peaceful resolution of the Taiwan issue and expects that the Taiwan issue will be settled peacefully by the Chinese themselves." In addition, although Premier Hua Kuo-feng registered China's objection to continuing American arms sales to Taiwan, he said that, despite these differing views, "nevertheless the joint communiqué was reached."

Chinese leaders have often stated their preference for a peaceful resolution of the Taiwan issue, and one can understand why. Peking is preoccupied with the Soviet military threat, and it lacks the military means successfully to invade Taiwan. It is clearly interested in improving its relations with the West, especially the United States and Japan, in order to promote both parallel action to balance Soviet power and cooperative arrangements to modernize its agriculture, industry, technology, and defense. Nothing would more surely jeopardize this vital strategic endeavor than the use of force against Taiwan.

Of course, circumstances may change over time, and it is noteworthy that the United States managed to normalize relations without undermining the legal basis for American action in behalf of Taiwan in the unlikely event that should become necessary. The recent joint communiqué did nothing to clarify the United States' view of the legal status of the island, which the Shanghai communiqué left artfully obscure. In the new communiqué the United States simply "acknowledges the Chinese position that . . . Taiwan is part of China."

This creative ambiguity in our legal position leaves open what actions we might take to assure the peaceful future of Taiwan, just

as that question was left open under the now terminating 1954 defense treaty, which provides only the vague assurance that, in the event of attack, the United States will "meet the common danger in accordance with its constitutional processes."

I believe that the combination of improved Sino-American ties, continuing nongovernmental relations with Taiwan (including access to defensive arms), and Washington's statement of interest in a peaceful settlement of the island's future will give Taiwan increased security and prosperity. To help realize this prospect, I intend to join in sponsoring legislation that will facilitate nongovernmental contact with the island and will sustain its well-being.

CAN THE EXECUTIVE TERMINATE THE TREATY ON ITS OWN?

Despite these measures to safeguard the island, some critics have denounced President Carter's normalization decision as a "stab in the back" of Taiwan. Sen. Barry Goldwater and others are now challenging, in the courts as well as in Congress, the presidential notice terminating the defense treaty. They incorrectly argue that the executive lacks authority to terminate the treaty, according to its own terms, without the approval of two thirds of the Senate or a majority of each house of Congress.

I strongly oppose this challenge, which threatens to sidetrack one of the most important foreign policy initiatives of recent history into domestic constitutional controversy. I am confident that this effort will fail, for law, practice, and policy clearly support the president's notice of termination in these circumstances. It is in no one's interest to throw our future relations with Taiwan into legal limbo, instead of assuring the continuity of our relations with the people of that island.

The president might have avoided the constitutional question by simply exercising his unchallenged prerogative to recognize the People's Republic as the government of China and to establish diplomatic relations with it. As demonstrated by the experience of other nations that have switched recognition from Taipei to Peking, this would have led to the lapse of the 1954 defense treaty and of the other bilateral agreements between Washington and Taipei, which Peking has always regarded as invalid, with the Congress then providing for continuing nongovernmental relations with Taiwan. By reiterating its previous declarations that the defense treaty was a nullity, Peking could have left no doubt that the treaty no longer had legal effect, as a consequence of the position of China's new government rather than through a termination decision by Washington.

The president chose, however, to end the defense treaty according to its one-year termination provision and to state that other agreements with the Republic of China on Taiwan endure until replaced by new arrangements with the authorities on the island. Whatever the merits of the latter claim under international law and practice, the president plainly has the independent authority to terminate a treaty according to its notice provision.

Although the Constitution requires the president to obtain the advice and consent of the Senate prior to concluding a treaty, it sets forth no such requirement for terminating a treaty. In approving the 1954 defense treaty with the Republic of China, the Senate might have required the president to obtain the approval of the Senate or Congress prior to termination, but it chose not to do so. The treaty simply provides for termination with one year's notice. In the light of 20th century practice, this plainly confers on the president the power to terminate the treaty at his discretion. In his December 15,

1978, memorandum to Secretary of State Vance, the State Department legal adviser, Herbert J. Hansel, stated categorically that "the president has the authority to decide under the Constitution whether the United States shall give the notice of termination provided for in Article X of the U.S.-R.O.C. Mutual Defense Treaty and to give that notice without congressional or Senate action."

Presidents have given notice of treaty termination independent of the Senate or Congress on 14 separate occasions in our nation's history, and ten of these instances have occurred in the last 50 years:

1815 (Madison). Agreement on annulment of 1782 Treaty of Amity and Commerce with the Netherlands.

1899 (McKinley). Notice of termination of certain articles of 1850 Convention of Friendship, Commerce, and Extradition with Switzerland.

1920 (Wilson). Agreement on termination of 1891 Treaty of Amity, Commerce, and Navigation with Belgium concerning the Congo.

1927 (Coolidge). Notice of termination of 1925 treaty with Mexico on prevention of smuggling.

1933 (Roosevelt). Notice of withdrawal from 1921 multilateral Convention for the Abolition of Imports and Export Prohibitions and Restrictions.

1933 (Roosevelt). Declaration of termination (withdrawn subsequently) of 1931 Treaty of Extradition with Greece.

1936 (Roosevelt). Protocol of termination (withdrawn subsequent) of 1871 Treaty of Commerce and Navigation with Italy.

1939 (Roosevelt). Notice of denunciation of 1911 Treaty of Commerce and Navigation with Japan.

1944 (Roosevelt). Notice of termination of 1929 protocol to Inter-American Convention for Trademark and Commercial Protection.

1948 (Truman). Notice of withdrawal from 1937 multilateral Convention for the Regulation of Whaling.

1954 (Eisenhower). Notice of withdrawal from 1923 Convention on Uniformity of Nomenclature for the Classification of Merchandise.

1962 (Kennedy). Notice of termination of 1902 Convention on Commercial Relations with Cuba.

1965 (Johnson). Notice of denunciation (subsequently withdrawn) of 1929 Warsaw Convention concerning international air travel.

1975 (Ford). Notice of termination of participation in the International Labor Organization.

Especially in the 19th century, presidents occasionally terminated treaties at the direction of or with the prior or subsequent consent of the Senate or the Congress. But this fact in no way negates the president's power to act independently. In modern practice this presidential exercise of independent authority outnumbers the total of all other methods utilized.

Since 1920 only President Hoover and Nixon have not terminated treaties pursuant to a notice provision. All other modern presidents, from Wilson through Carter, have exerted their valid constitutional authority by terminating treaties without formal advice and consent. Their actions have been accepted by the Congress and unchallenged in the courts.

No American judicial decisions directly address the question of the president's right, pursuant to a notice provision, to terminate a treaty without formal congressional approval. Some court cases assume independent presidential power to terminate. In *Charlton v. Kelly*, 229 U.S. 447 (1913), for example, the Supreme Court pointed out that it is for the president to determine whether a treaty violation has occurred and,

if so, whether termination is warranted. And in *Terlinden v. Ames*, 184 U.S. 270 (1902), the Supreme Court held that on the question of whether an American treaty with Prussia survived the formation of the German Empire, the actions of the executive branch and the German government were of controlling importance.

Often the issue of treaty termination is related intimately to the question of recognition of a foreign sovereign and establishment of diplomatic relations, as indeed it is in the case of China, and both questions have been regarded as requiring political judgments that are within the president's authority.

An overwhelming number of contemporary scholars of international and constitutional law who have considered this question agree that the president has the clear prerogative to give notice of termination, pursuant to a notice provision in a treaty, without the approval of the Senate or the Congress.<sup>1</sup> The American Law Institute takes the same position in Sections 155 and 163 of the Restatement of the Law (Second), Foreign Relations of the United States.

PRESIDENT CAN'T ENTANGLE ALONE, BUT HE CAN DISENTANGLE

Sound historical and policy reasons sustain this conclusion. The framers of the Constitution feared "entangling alliances" and required the president to obtain the advice and consent of two thirds of the Senate prior to concluding a treaty. The framers manifested no similar concern with the president's exercise of discretion to disentangle the nation from alliances, and the Constitution thus imposed no requirement of Senate participation in treaty termination.

In the absence of specific constitutional, treaty, or statutory language restraining the president, it has been understood that he is responsible for determining how to deal with treaties once concluded. For example, in referring to the 1793 Neutrality Proclamation by President Washington and its relation to American treaties with France, Alexander Hamilton wrote that "treaties can only be made by the President and Senate jointly; but their activity may be continued or suspended by the president alone." Hamilton, incidentally, made this statement with specific reference to a situation almost identical to that involved in normalization with China.

He wrote, as quoted in *Letters of Pacificus and Helvidius on the Proclamation of Neutrality of 1793*:

"The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized, or not; which, where a treaty antecedently exists between the United States and such nation, involves the power of continuing or suspending its operation. . . .

"This power of determining virtually upon

<sup>1</sup> See, e.g., Cohen, "Normalizing Relations with the People's Republic of China," 64 A.B.A.J. 940 (1978); Tribe, *American Constitutional Law* 164 (1978); Henkin, *Foreign Affairs and the Constitution* 136 (1972); Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. II, 1519-20 (2d rev. ed. 1945); McDougal and Lans, "Treaties and Congressional-Executive or Presidential Agreements," 64 YALE L.J. 181, 336 (1946); McClure, *International Executive Agreements* 16, 306 (1941); Willoughby, *The Constitutional Law of the United States*, Vol. I, 585 (2d ed. 1929); Reeves, "The Jones Act and the Denunciation of Treaties," 15 A.J.I.L. 33, 34, 38 (1921); Letter from Lowenfeld to the *New York Times*, May 28, 1978.

the operation of national treaties, as a consequence of the power to receive public ministers, is an important instance of the right of the executive to decide upon the obligations of the country with regard to foreign nations."

Despite the fact that the president's independent power to terminate treaties is well-established, supported decisively by modern practice, and accepted by the Congress and most scholars, Senator Goldwater now seeks to challenge it. Because the president, especially in the nineteenth century, occasionally terminated a treaty with prior or subsequent Senate or congressional participation, he argues that the president must always obtain legislative approval, except that, as he wrote in *China and the Abrogation of Treaties*, "history indicates the president may, if Congress raised no objection, determine whether or not a treaty (1) has been superseded by a later law or treaty inconsistent with or clearly intended to revise an earlier one, (2) has already been abrogated because of its violation by the other party, or (3) cannot be carried out because conditions essential to its continued effectiveness no longer exist and the change is not the result of our own action." He would dismiss the many instances of independent presidential treaty termination as "exceptions" to the supposed general rule requiring legislative approval.

Senator Goldwater's analysis is seriously flawed. When carefully examined, the instances of independent presidential termination do not fall into the three categories of "exceptions" that he suggests. Rather, they demonstrate that the president has been free to terminate treaties in a variety of situations whose common denominator is that in each case it was no longer wise for the United States to adhere to the treaty in question. Contrary to Senator Goldwater's assertion, most instances of independent presidential termination have occurred in circumstances in which there was no inconsistent law or treaty superseding the treaty in question, there was no violation by the other party, and there was no impossibility of performing treaty obligations.

For example, Senator Goldwater claims that President Coolidge independently terminated our 1925 treaty with Mexico on the prevention of smuggling because it was "impossible to implement the convention." Yet there is no factual basis for this contention. The record reveals that the secretary of state thought it inadvisable to retain the treaty so long as Mexico failed to conclude an arrangement safeguarding American commerce against discrimination. (U.S. Archives, 74 D 481, Box 16678.)

Similarly, Senator Goldwater seeks to portray President Roosevelt's 1939 termination of the 1911 commercial treaty with Japan as being compelled by our obligations under the 1922 Nine-Power Agreement. But nothing in the later agreement required the United States to terminate the purely commercial treaty.

The only evidence offered to support Senator Goldwater's view is a statement by Senator Schwelienback that actually shows that he did not believe it necessary to terminate the 1911 treaty. (84 Cong. Rec. 10785.) The treaty was terminated, as the notice stated, because it "contains provisions which need new consideration . . . with a view to better safeguarding and promoting American interests as new developments may require."

In fact, not only is Senator Goldwater's interpretation flawed by its misconstruction of the precedents, but it also is flawed logically as well. What is the source of the president's power to make "exceptions" unless it derives from his authority to terminate a treaty without legislative approval? Why cannot the president make other "ex-



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ceptions"? Since the 14 cases of independent presidential termination that supposedly constitute "exceptions" outnumber the total of all other methods utilized in modern practice, they are strange "exceptions" indeed.

The treaty power is not the only one in which the Constitution requires the approval of the Senate before the president takes certain action but does not require similar approval when he undoes that action. The Senate's consent is necessary for the appointment of cabinet officers but not for their removal. (272 U.S. 52; 295 U.S. 602.) "The conduct of foreign relations, like the duty to see that the laws are faithfully executed, is a plenary executive power," Prof. Randall Nelson wrote in 42 *Minnesota Law Review* 879 (1958). "In the absence of express limitations upon the power to remove and the power to terminate, there is a strong presumption that no such limitation was intended."

#### SUBSEQUENT PRACTICE HAS REPUDIATED EARLIER VIEWS

In seeking to bolster his position, Senator Goldwater relies on quotations from Thomas Jefferson and James Madison—uttered before the nation had any experience with treaty termination—to the effect that legislative consent is legally required. Yet in the same discussion Jefferson conceded that there were disagreements about the treaty power, and in 1815 Madison became the first president to terminate a treaty without legislative consent. Subsequent presidential practice has plainly repudiated the early view of Jefferson and Madison and confirmed that of Hamilton and later Madison.

Nor is there substance to Senator Goldwater's general argument that, apart from the many "exceptions," when the president terminates a treaty without legislative consent, he violates his constitutional duty to "take care that the laws be faithfully executed," because the Constitution makes a treaty "the supreme law of the land."

This misses the point of the very case at issue. Article 10 of the treaty in question provides for its termination. In giving notice of an intent to terminate the treaty pursuant to that provision, the president was not violating the treaty but acting according to its own terms—terms that were approved by the Senate when it consented to the treaty.

As Charles C. Hyde, former legal adviser to the Department of State, put it in his leading treatise: "The president is not believed . . . to lack authority to denounce, in pursuance of its terms, a treaty to which the United States is a party, without legislative approval. In taking such action, he is merely exercising in behalf of the nation a privilege already conferred upon it by the agreement."

This suggests the proper course for senators who are troubled by the president's independent authority to terminate a particular treaty or category of treaties. At the time that each treaty is made and submitted for their advice and consent, they could seek to condition Senate approval on acceptance of the Senate's participation in its termination. The Senate might have done so when it consented to the 1954 defense treaty with the Republic of China, but it did not. Any attempt, at this point, to invalidate the president's notice of intention to terminate is not only unwise as a matter of enlightened China policy but also without legal foundation. Prof. Louis Henkin, one of our leading constitutional authorities, has written: "Attempts by the Senate to withdraw, modify, or interpret its consent after a treaty is ratified have no legal weight; nor has the Senate any authoritative voice in interpreting a treaty or in terminating it."

#### GOOD LAW, GOOD POLICY, AND IN OUR AND CHINESE NATIONAL INTERESTS

Normalization of relations with China is good law and good policy. It is in our na-

tional interest, in the interest of Chinese on both sides of the Taiwan Strait, and in the interest of peace in Asia and the world. We should not allow an argument that is based on a misconception of the law to divert us from supporting the president's statesmanship. The Congress and the American people should focus their efforts on co-operating with the executive branch to develop the measures required to consolidate our new and encouraging relations with both the People's Republic and Taiwan.

#### TREATY TERMINATION IS A SHARED POWER

(By BARRY M. GOLDWATER)

On December 15, 1978, while the Congress was out of session, President Carter announced that the United States would recognize the People's Republic of China as the sole legal government of China as of January 1, 1979. At the same time the president also made known, through informal briefings for the media, his unilateral decision to terminate the defense treaty with the Republic of China, claiming authority to act under Article X of that treaty, which states "either party," not "either president," may cancel it after giving one year's notice. Without public announcement, the actual notice of termination of the defense treaty was sent by diplomatic note to the Republic of China on December 23, 1978, to be effective on and as of January 1, 1979.

The president's decisions were shrouded in secrecy and contrary to the purpose of Section 26 of the International Security Assistance Act of 1978, a law enacted by Congress just three months preceding his announcement, which specifically called for prior consultation with the legislative branch.

On December 22 I filed suit in the United States District Court for the District of Columbia, with 15 of my colleagues from both houses of Congress, challenging the validity of the president's attempted termination of the treaty without any supporting legislative authority. We asked the court to declare the president's action unconstitutional and illegal and to set aside his purported notice to cancel the Treaty as having no effect.

It is the premise of our case that in acting alone to interpret the defense treaty and to make a self-serving interpretation of the constitutional allotment of powers among the executive and legislative departments, President Carter has not only usurped powers conferred on the Congress, but has attempted to exercise a function the Supreme Court has said is clearly reserved to the judicial branch, the power "to say what the law is." *United States v. Nixon*, 418 U.S. 683 (1974.)

The question is not whether any past precedents justify the president's assertion of independent power, although I believe the weight of historical evidence proves that treaties are normally terminated only with legislative approval. The true question is whether his action represents the original intent of the people who drafted the Constitution.

This is a legal and historical question, and the hard fact is that nothing in the records of the federal convention or in the explanations at the state conventions on ratifying the Constitution confirm in any way the president's sweeping claim of unchecked power. To the contrary, contemporary materials and the text of the Constitution show that the termination of a treaty, involving as it does the sacred honor of the country and serious policy interests, is a decision of such major importance that the framers required the joint participation of both political departments, the executive and legislative, in making that decision.

If left unchallenged, the president's unilateral action will set a dangerous precedent that would enable him or a future president to terminate any defense treaty at will. In fact, the precedent could be used for the

presidential termination of any treaty to which the United States may now be a party or become a party in the future—for instance, with Israel. This unchecked concentration of power is totally inimical to our democratic representative form of government.

However one may feel about the wisdom of independent presidential termination of the defense treaty as a step required to complete full normalization of relations with Peking, we each should remember the admonition of Chief Justice John Marshall: "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional." In filing suit, it was my purpose to defend the legislative function conferred by the Constitution, not to contest the rightness or wrongness of his policies, which can be debated in other forums.

The Constitution is silent as to how a treaty shall be terminated. It is also silent on how a statute or any other law shall be cancelled. Yet no one makes the argument that the president alone can repeal a statute. In fact, in *The Confiscation Cases*, 20 Wall. 92 (1874), the Supreme Court expressly said that "no power was ever vested in the president to repeal an act of Congress."

It is my belief that by placing treaties among "the supreme Law of the Land" in Article VI, clause 2, and by requiring in Article II, Section 3, that the president "shall take care that the Laws be faithfully executed," the framers meant, and expected without saying more, that the president would carry out a treaty in good faith. This is exactly the opposite of giving him an implied authority to cancel any treaty at will. It is also well known that the framers were concerned with restoring dependability to treaties made by the United States. They were anxious to gain the respect and confidence of foreign nations by keeping our treaty commitments.

For example, in the preface to his notes on debates in the Constitutional Convention, James Madison singles out the lack of obedience to treaties as one of the conditions the federal Constitution was intended to correct. Our unfaithfulness to treaties, Madison wrote, is among "the defects, the deformities, the diseases and the ominous prospects for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided."

In a similar vein, James Wilson, who signed the Constitution and sat on the first Supreme Court, lectured his law students that a country "which violates the sacred faith of treaties, violates not only the voluntary, but also the natural and necessary law of nations. . . ." He added: "As the United States have surpassed others, even other commonwealths, in the excellence of their constitution and government; it is reasonably to be hoped, that they will surpass them, likewise in the stability of their laws, and in their fidelity to their engagements."

Would the framers, who regarded violation of "the sacred faith of treaties" as "wicked," "dishonorable," and contrary to the best interests of the country in acquiring respect in the community of nations, have contradicted these purposes by making it as easy under the new Constitution for a single officer of the government to repeal a treaty as it had been for individual states to nullify a treaty under the Articles of Confederation?

We should also remember the concern of the framers with sectional economic interests. Many of them hoped for advantageous commercial treaties that would open up trade for their sections with other nations. The framers also had extensive discussions about treaties of peace as being included within the treaty clause, in recognition of the fact that those treaties would be the normal method of terminating a war. Without any supporting textual evidence to show

it, it is inconceivable that the framers assigned to one person power to denounce a commercial treaty that would be highly beneficial to the interests of a particular geographic region or a peace treaty that had formally concluded a war and whose faithful adherence would presumably avert the chance of resumption of hostilities, however slight that chance may be. As the language of the Constitution does not distinguish commercial and peace treaties from other treaties, such as a security pact, it is obvious that all treaties share the same protective armor.

JOINT PARTICIPATION NEEDED FOR ANY  
"GENUINELY CRITICAL DECISION"

In his landmark work on the subject in *5 Seton Hall Law Review* 527 (1974), Prof. Arthur Bestor persuasively shows that the doctrine of separation of powers is "prescribed as explicitly for the conduct of foreign relations as for the handling of domestic matters" and explains: "The purpose and effect of any such arrangement is to require the joint participation—the co-operation and concurrence—of the several branches in the making and carrying out of any genuinely critical decision."

Justice Joseph Story, one of the foremost scholars to sit on the Supreme Court, confirms his statement. In his *Commentaries on the Constitution*, Story writes, in connection with the decision of the framers to allot the treaty authority jointly in the president and the Senate, "his joint possession of the power affords a greater security for its just exercise, than the separate possession of it by either" and that it "is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively upon treaties."

Story adds, in words having equal relevance to making or unmaking a treaty: "The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent or other independent minds, to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation."

This is what the framers had in mind in establishing a system of checks and balances. They sought to protect the security of the people by making the president and the Senate checks on each other in the exercise of the full treaty power. By providing for the added deliberation and attention to the subject that would be required by vesting the full treaty power jointly with the president and at least one branch of the legislature, the security of the people would be far better protected than it would be if the power were conferred on a single officer. The security that follows caution and added deliberation would be lost if no check had been put on the unmaking of a treaty.

Why the framers would want to offer the people security in the making of treaties, but not in their termination, is unexplained by those who argue this difference exists. I believe there is no difference and that the checks and balances called for in the separation of powers is equally as applicable to the critical decision of casting aside our formal treaties with other nations as it is in making those treaties originally.

The early authorities, including some among the Founding Fathers, saw the repeal of a treaty in the same light as they saw the repeal of a statute. It would have been strange to hear anyone argue that the president, by his sole authority, could terminate whatever treaty he wished, whenever he wished. James Madison, for one, believed that "the same authority, precisely," would be exercised in annulling as in making a treaty." Thomas Jefferson, when he was Washington's first secretary of state, wrote a report in which he reasoned that the same

authority who possessed the power of making treaties consequently had the power of declaring them dissolved. And, when he was vice president, Jefferson compiled the first manual of rules of the Senate, in which he wrote: "Treaties being declared equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded."

Further evidence that the frames linked the repeal of treaties to the repeal of statutes appears in John Jay's brief analogy in *The Federalist*, Number 64: "They who make laws may, without doubt, amend or repeal them, and it will not be disputed that they who make treaties may alter or cancel them . . ."

Justice Iredell, who served on the first Supreme Court, shared the views of Madison and Jefferson as to the legislative role in terminating treaties. In an opinion accompanying *Ware v. Hylton*, 3 Dall. 199 (1796), he twice stated his belief that Congress alone has "authority under our government" of declaring a treaty terminated, even in circumstances where the other country has first violated it.

Another authority who believed the legislature must act before a treaty is terminated is James Buchanan. In writing about the anticipated cancellation of a commercial treaty with Denmark considered damaging to our exports, then Secretary of State Buchanan wrote that "an act must first pass Congress to enable the president to give the required notice. . . ." His official concession of the joint possession of power is especially noteworthy since that treaty contained a provision similar to the one in the R.O.C. defense treaty so heavily relied on by President Carter.

Each treaty authorizes termination after notice being given to the other party. However, Secretary Buchanan obviously believed the sovereign authority who could make the decision to give notice was not the president alone, but the president together with the authority of a law enacted by Congress.

When the United States finally cancelled the treaty with Denmark, it was accomplished by a Senate resolution of March 3, 1855, passed unanimously, which advised and consented to authorizing President Pierce to give notice of its termination. The president had requested the authority, thereby giving some indication of his belief that the decision-making authority was jointly possessed by him and the legislature, or at least one branch of it, and was not vested in him alone.

The incident led to an authoritative report by the Senate Foreign Relations Committee in 1856. In response to public discussion over whether the Senate had acted properly in authorizing presidential action without the concurrence of the House of Representatives, the committee concluded that the Senate and president jointly possessed competence to terminate a treaty "without the aid or intervention of legislation" by the other house. Speaking precisely to the same issue presented by Article X of the R.O.C. defense treaty, the committee decided that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in President and Senate."

The committee explained: "The whole power to bind the government by treaty is vested in the president and Senate, two thirds of the senators present concurring. The treaty in question was created by the will of the treaty making power, and it contained a reservation by which that will should be revoked or its exercise cease on a stipulated notice. It is thus the will of the treaty-making power which is the subject of revocation, and it follows that the revocation is incident to the will." Thus, the com-

mittee clearly took a position at odds with the novel theory asserted by President Carter today.

LODGE THOUGHT CONGRESS COULD DISAPPROVE  
TAFT'S NOTICE

Henry Cabot Lodge, when he was chairman of the Senate Foreign Relations Committee in 1911, also believed the power of treaty termination was jointly possessed by the president and legislature. In response to a question in the Senate whether notice, given Russia by President Taft to terminate a commercial treaty because of Soviet violations, would be legal in the absence of congressional ratification, he replied, "Of course, Congress can disapprove his action; and then, I take it, the notice falls. . . ." Senator Lodge added his opinion that the power to terminate that treaty by notice, as authorized in an article thereof, was vested in the Senate and president together "because in making such a treaty the Senate and the president represent the high contracting party."

Lodge was then acting as floor manager of legislation that did ratify the president's action, and his statements clearly express his interpretation of the term "contracting party," used in a treaty provision, as meaning the Senate and president jointly.

In 1917 Prof. Edward Corwin, recognized as one of the leading authorities on the Constitution in this or any other century and generally a defender of broad presidential power, wrote: "[A]ll in all, it appears that legislative precedent, which moreover is generally supported by the attitude of the executive, sanctions the proposition that the power of terminating the international compacts to which the United States is party belongs, as a prerogative of sovereignty, to Congress alone."

Another official admission of the necessity for legislative concurrence in the decision to provide notice in circumstances in which a treaty itself authorizes the giving of notice comes from an attorney general's opinion. In 1941 Francis Biddle, then acting attorney general, was asked to advise President Roosevelt whether, in view of the dislocation of ocean-borne commerce because of war, the International Loan Line Convention, which governed ocean tanker tonnage loads, had ceased to be binding. Biddle concluded the convention was inoperative because of the "well-established principle of international law, *rebus sic stantibus*, that a treaty ceases to be binding when the basic conditions upon which it was founded have essentially changed."

But he sharply qualified his opinion. While the president could decide whether the treaty was inoperative or suspended under this principle of international law, the president alone could not terminate the treaty if he acted under a treaty provision allowing withdrawal by giving due notice. Biddle wrote: "It is not proposed that the United States denounce the convention under Article 25 (47 Stat. 225), nor that it be otherwise abrogated. Consequently, action by the Senate or by the Congress is not required."

Article 25 of that convention provided that it may be denounced by any "contracting government" by notification to the other parties and that the withdrawal should take effect 12 months after the date of notification is received. The article is similar to Article X of the R.O.C. defense treaty, which likewise allows denunciation by the United States after one year's notice. Thus, it is clear that Biddle believed legislative concurrence was needed in order to authorize presidential action pursuant to the terms of a treaty in circumstances identical to those asserted by President Carter as grounds for unilateral action. President Carter's decision to notify the Republic of China on his sole authority is directly in conflict with a 20th century opinion of the country's highest law enforcement officer.

March 8, 1979

## CONGRESSIONAL RECORD — SENATE

S 2347

History confirms the denial of an independent treaty termination power of the president, although there are minor exceptions explainable under principles of ordinary contract law. In fact, the first treaty terminations were done by act of Congress in 1798. These were the three treaties of alliance with France, which were cancelled by Congress after repeated French attacks on American shipping.

The second instance of termination by the United States was in 1846, 57 years after the Constitution was approved. President Polk asked Congress for authority to pull out of a treaty with Britain yielding joint rights to the Oregon Territory. A joint resolution was enacted giving him authority to provide notice of withdrawal, as was authorized in the treaty. This is the first known instance of termination by notice and is impressive historical evidence of what procedure is required to carry out a treaty provision similar to Article X of the R.O.C. defense treaty.

In all, I have identified 48 instances in which treaties have been terminated or suspended by the United States—40 with the clear authorization or ratification of an act of Congress, joint resolution, or Senate resolution. Four others were superseded by a later statute or treaty in conflict with the earlier treaty. The normal practice of treaty termination in the United States has been joint action by the president and Senate or Congress.

Only four treaties have been cancelled by the president entirely independent of any supporting legislative authority. The president may not have acted constitutionally even in these isolated cases, which are abnormal. In fact, Congress may not have been informed, and thus no challenge was made at the time. But if there is any difference in the two groups of cancelled treaties, a logical explanation may be found in contract law.

For in each of the situations of independent presidential action, the other party had first violated the treaty, it was impossible to perform the treaty, or there was a fundamental change of conditions essential to the operation of the treaty and originally assumed as the basis for it. In none of these incidents was the reason for terminating or withdrawing from a treaty the result of a breach or other action on our part inconsistent with the purposes of the treaty concerned.

In these circumstances, the incidents fall within the rules of early contract law by which a party is released from an agreement. All the first writers on the law of nations, such as Grotius and Battel, whose works were consulted by the Founding Fathers, agreed that there is no difference in the rules of law applied to public treaties or private contracts.

The framers may well have silently assumed the president could determine a treaty ended if it should be violated by the other country, if performance became impossible, or if there was a fundamental change of conditions not of our own making. In their own experience, it was an implied condition of a contract or treaty that the obligations of the parties ended or were suspended on the happening of one of these events. Without conceding the legality of occasions when the president had acted unilaterally, these principles of contract law may explain independent presidential action in exceptional circumstances, none of which apply to the president's action regarding the R.O.C. defense treaty.

## STATE DEPARTMENT'S MEMORANDUM BACKS CARTER'S ACTION

The State Department has released a memorandum by Herbert Hansell, its legal adviser, dated December 15, the same day as President Carter's public announcement, claiming the president could do what he

did. That paper, actually a legal argument, contains highly selective quotations from authorities (none cited in this article appears in the memo) and sets forth a dubious list of alleged precedents for unilateral presidential action. Although the legal adviser lists 12 precedents for independent treaty termination, he admits on the face of the brief that two were never terminated (notice was withdrawn) and two more were instances in which the other nations first denounced the treaties, which seriously weakens the relevance of the precedents.

The State Department reaches so far to find an early precedent that it wrongly attributes the first example of presidential treaty termination to President Madison. This seeming rock of the State Department list is created from a passage in a letter from Secretary of State Monroe in response to the claim by the Netherlands in 1815 that an earlier commercial treaty had expired.

State claims Monroe's answer appears to accept the interpretation given the treaty by the Netherlands. Once Monroe was president, however, he repudiated that meaning of his letter. Monroe's secretary of state, John Quincy Adams, insisted that the earlier treaty had not been annulled. In *University v. Miller*, 14 N.C. 188 (1831), the Supreme Court of North Carolina accepted President Monroe's position and enforced the treaty as law.

The State Department also omits mentioning in its memo that the early commercial treaty had been concluded with a different state. During the Napoleonic wars the United Netherlands, with whom we had signed the treaty in 1782, was absorbed into the French empire, entirely disappearing as a separate nation. After the war it was reformed and joined with other areas.

Samuel B. Crandall writes the state thus erected from the ashes of war "differed in name, territory, and form of government from the state which had entered into the treaty. . . ." In other words, if the treaty was annulled, it was because of the disappearance of one of the parties and not because of any broad power held by the president. This is the stuff of which the State Department memo is made.

Of the few alleged precedents that have any plausible basis (three or four at most), all can be explained by invoking the principles of contract law discussed above. None of these exceptions has any application to the R.O.C. defense treaty.

Even as to this handful of precedents, there is no ground for asserting independent presidential power. There is no court decision upholding their legality, and the last precedent is no better than the first. As the Supreme Court said in *Powell v. McCormack*, 395 U.S. 486 (1969): "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."

It has been suggested that since the president alone has the power to remove executive officers appointed by and with the advice and consent of the Senate, he also has power to remove treaties. The two cases are completely dissimilar. The ability to remove officers clearly under his direction aids in the efficient performance of the president's duties. The removal of treaties violates the president's constitutional duty to see "that the laws be faithfully executed." It is obvious that the president's relation with subordinate officers cannot be equated to his relation with sovereign authorities of other nations. The courts also have sharply restricted the removal power to purely executive officers, holding the president cannot remove officers who exercise quasi-legislative or judicial functions in *Humphrey's Executor*, 295 U.S. 602 (1935). As the treaty power has long been found to partake more of the legislative than executive character, the analogy with the removal power does not hold up.

By admitting that the defense treaty "is technically still in effect" in 1979, until the notice period expires, the administration rejects any notion that the treaty lapsed upon derecognition of the R.O.C. By this and by asking Congress for legislation to permit the other "current agreements and treaties in effect with the government on Taiwan to remain in force," the administration admits that the authorities on Taiwan are a de facto government in control of the territory of Taiwan and that we can have dealings with them.

The only remaining question is whether, although the president normally cannot terminate a treaty without further legislative action, the Senate has consented to his action in the case of this treaty by having approved language in it that allows termination by notice. The answer is clear that no authority of this type can be inferred from the treaty or legislative history.

First, it should be noted that the provision does not authorize termination after notice by "the president" or "executive" of either country. The treaty uses the term "party." This obviously means the sovereign authority of the state giving notice. In determining who represents the sovereign authority, it is necessary to consult the constitutional processes of the state in order to find what power makes the decision to give notice and, after that decision has been made, what power shall actually transmit the notice. Under our Constitution, it is clear that whoever communicates notice, the power of making the initial decision belongs jointly to the president and Senate or Congress.

Although it is generally accepted that the president is "the sole organ of the nation in its external relations, and its sole representative with foreign nations" (29 U.S. 304, 319-20), this proves no more than that it is the president who shall act as the official representative of the nation in communicating with the foreign government. His capacity as a diplomatic organ in no way need imply a power of making the critical policy decision required before delivery of the notice.

There is absolutely nothing in the legislative reports and proceedings concerning the 1954 treaty that indicates the president can act alone in giving notice. In fact, the language of the defense treaty differs in a significant way from the text of the related Formosa Resolution, which did specifically authorize the president to cancel it. Thus, the record bears strong evidence the Senate did not mean for the president to act alone in denouncing the treaty, since similar language was not used in the treaty.

The Formosa Resolution and the defense treaty both came before the Senate at the same time. The treaty was first considered in committee concurrently with the resolution in January, 1955. The resolution was reported to the Senate on January 26 and signed into law on January 29. The treaty was reported on February 8 and approved by the Senate on February 9.

IF THE TREATY MEANT "PRESIDENT," WHY DID IT SAY "PARTY"?

The Senate had each measure before it for immediate comparison. In this setting, it is striking that the Formosa Resolution, by its own language, expires "when the president shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress." The treaty, on the other hand, provides for termination on one year's notice by "either party."

Why, if the treaty meant to authorize "the president" of either party to terminate it by giving notice, did it not say so? The Senate had before it language of the specific kind in the Formosa Resolution, which it could have substituted for Article X, if it meant to approve independent presidential action.

When it advised and consented to a treaty containing an entirely different term, without any explanation in the papers sent to it by the executive branch or in its own hearings, report, or floor debate, indicating that the term meant something other than what it said ("party"), this is surely conclusive that it did not understand "party" to mean "president."

In 1856 the Senate Foreign Relations Committee had unequivocally found that language similar to Article X referred to "the will of the treaty-making power," which it defined as "the president and Senate." The Senate, together with the president and often with the House of Representatives, had participated in the termination of nearly 40 treaties by 1955, virtually all of which contained duration provisions similar to Article X of the R.O.C. defense treaty. From this, if any understanding could be attributed to the Senate when the treaty was ratified, it was that the term "party" meant the president and Senate jointly.

But the State Department would not only attribute a meaning to the R.O.C. defense treaty of which it never informed the Senate. It would put the same meaning on dozens of other major treaties that contain similar provisions. For example, the North Atlantic Treaty Alliance and our security pacts with South Korea, Japan, and the Philippines include articles allowing either "party" to withdraw after one year's notice. The Nuclear Test Ban Treaty, the Statute of the International Atomic Energy Agency, the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Universal Copyright Convention, and the Outer Space Treaty, among others, each provide by their own terms for termination after one year's or less notice to the other parties. The consequences of accepting the State Department's interpretation of these provisions is far reaching indeed.

No matter that the Senate was not clearly informed of what the language meant when it gave its advice and consent to ratifying these agreements. No matter that the executive may have had a different understanding than the Senate and kept silent about it.

When it suddenly suits the needs of expediency for its policy of the moment, the State Department unveils a doctrine it has hidden from public discussion. After having exploited the use of executive agreements to the point where the president can make virtually any treaty he wants by calling it a mere executive agreement, now the State Department is ready to usurp the power of unmaking treaties as well.

Events in the year ahead may well determine whether the executive succeeds or fails in this historic power grab. ○

#### ORDER FOR RECESS UNTIL MONDAY, MARCH 12, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 o'clock noon on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### INTERNATIONAL TRAVEL AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 15, S. 233.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 233) to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes,

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment on page 2, beginning with line 8, strike through and including line 14, and insert in lieu thereof the following:

"Sec. 9. The Secretary shall reduce the number of employees of the United States Travel Service in the offices of such Service in the District of Columbia, in order that the total number of such employees as of September 1, 1979, and thereafter, does not exceed 40 per centum of the total number of such employees as of December 31, 1978."

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the first sentence of section 6 of the International Travel Act of 1961, as amended (22 U.S.C. 2126) is amended by striking out "and" immediately after "1978"; and inserting immediately before the period at the end thereof the following: "; and (8) \$8,000,000 for the fiscal year ending September 30, 1980".

Sec. 2. The International Travel Act of 1961, as amended (22 U.S.C. 2121 et seq.) is further amended by adding at the end thereof the following new section:

"Sec. 9. The Secretary shall reduce the number of employees of the United States Travel Service in the offices of such Service in the District of Columbia, in order that the total number of such employees as of September 1, 1979, and thereafter, does not exceed 40 per centum of the total number of such employees as of December 31, 1978."

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Virginia.

Mr. WARNER. I thank the distinguished Senator from West Virginia.

Mr. President, I rise in support of S. 233.

The chairman, Senator CANNON, and the chairman of the subcommittee, Senator INOUE, and myself have cosponsored this bill.

It is for the purpose of continuing the U.S. Travel Service for a year at a greatly reduced level.

Mr. President, I rise to support S. 233 introduced by the senior Senator from Hawaii, Mr. INOUE, which I cosponsored, to continue funding of the U.S. Travel Service for 1 year at a greatly reduced level. Included in this reduction is a 60-percent cut in the staff of the USTS Washington office.

International travel and tourism—persons coming to the United States from other countries—are of tremendous benefit to our Nation's economy. It is for this reason that, in 1961, the Congress approved the International Travel Act, authorizing the Secretary of Commerce to encourage such travel and tourism in the United States through the U.S. Travel Service.

Since enactment of that legislation, the Congress has kept a close watch on the tourism industry. Extensive hearings have been held on the subject and, from time to time, additional legislation has

been enacted to encourage growth in the travel and tourism industry.

In 1974, the Senate, without a dissenting vote, adopted Senate Resolution 347 authorizing the Senate Commerce Committee to undertake a comprehensive study of the tourism industry and to recommend legislation to establish a national tourism policy. That mandate was carried out. Last year, the Commerce Committee published the National Tourism Policy Study.

Mr. President, that study found that three USTS travel service programs during the period of fiscal 1974-77 for tour development, incentive travel, and conventions had a cost-benefit ratio of \$18.60 in foreign exchange earnings for the Nation's travel and tourism industry for every USTS budget dollar expended.

That would seem to me to represent a very fine investment, particularly at a time that the deficit in the United States balance of payments has reached an all-time high.

In spite of this, the administration, by recommending that the USTS not be funded for the coming fiscal year, has proposed to eliminate an agency which has had a strong positive impact toward reducing that balance-of-payments deficit.

As a result of the National Tourism Policy Study by an earlier Congress, the Commerce Committee has held hearings and soon will come forth with legislation to implement a national tourism policy. In the meantime, I believe that the U.S. Travel Service, for the reasons I have already mentioned, should be continued at a reduced level until such time as Congress acts on implementing a national tourism policy.

Therefore, Mr. President, I support passage of S. 233.

Mr. President, I ask unanimous consent that Senator Pressler may have the remainder of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I thank the Senator from Virginia.

I wish to express my support for S. 233 and to commend Senators CANNON, INOUE, and WARNER for their leadership in this area.

I join as a cosponsor in that effort.

I commend them for their recognition of the importance of the tourism industry in our Nation. Their work in this area is greatly appreciated by the people of South Dakota and myself.

In South Dakota, tourism is our second largest industry. This is largely family tourism, and much of it is in the Black Hills. It is very important for Congress to take a careful look at this wholesome industry, and the importance of retaining the U.S. Travel Service offices, both here and abroad.

I was very concerned to hear that the administration wanted to eliminate the USTS budget for 1980. Eighty-six percent of our foreign visitors come from the six countries where we maintain USTS offices: Canada, Mexico, the United Kingdom, France, West Germany, and Japan. Five percent of our international tourism is from nine countries where USTS conducts travel promotion